

No. 14380

United States
Court of Appeals
for the Ninth Circuit

E. S. McKENDRY and PANCHO BARNES, also
known as Florence Lowe Barnes and as Flor-
ence Lowe Barnes McKendry,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeals from the United States District Court for the Southern
District of California, Northern Division

FILED

APR - 7 1955

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Los Angeles 12, California. [1*]

* Page numbers appearing at foot of page of original Transcript of Record.

In the United States District Court, Southern District of California, Northern Division

No. 1253-ND—Civil

UNITED STATES OF AMERICA, Plaintiff,

vs.

360 ACRES OF LAND IN THE COUNTY OF KERN, State of California; E. S. McKendry; Florence Lowe Barnes, also known as Florence Lowe Barnes McKendry; William Emmert Barnes; Benjamin C. Hannam; Kathryn May Hannam; Florence Lowe Barnes, doing business as Pancho's Rancho Oro Verde; Desert Aero, Inc.; Layne & Bowler Corporation, a corporation; Farmers and Merchants Trust Company of Long Beach, a corporation; Farmers and Merchants Bank of Long Beach, a corporation; County of Kern, a body politic and corporate; State of California, a corporation sovereign, and Unknown Owners, Defendants.

COMPLAINT IN CONDEMNATION

1. This is an action of a civil nature brought by the United States of America at the request of the Assistant Secretary of the Air Force of the United States, for the taking of property under the power of eminent domain and for the ascertainment and award of just compensation to the owners and parties in interest.

2. The authority for the taking is the Act of Congress approved February 26, 1931 (46 Stat.

1421; 40 U.S.C., Sec. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority [2] of the Act of Congress approved August 1, 1888 (25 Stat. 357; 40 U.S.C., Sec. 257); and the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241) and April 11, 1918 (40 Stat. 518; 50 U.S.C., Sec. 171), which acts authorize the acquisition of land for military purposes; the Act of Congress approved August 12, 1935 (49 Stat. 610, 611; 10 U.S.C., 1343a, b, and c), which Act authorized the acquisition of land for Air Force Stations and Depots; the National Security Act of 1947 approved July 28, 1947 (61 Stat. 495); the Act of Congress approved June 17, 1950 (Public Law 564, 81st Congress); and the Act of Congress approved September 6, 1950 (Public Law 759, 81st Congress), which act appropriated funds for such purposes.

3. The public uses for which said lands are taken are as follows: The said lands are necessary adequately to provide for expanding needs and requirements for the Department of the Air Force and other military uses incident thereto.

4. The estate taken for said public uses is the fee simple title, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipe lines.

5. The property so to be taken is situate in the County of Kern, State of California, and, for con-

venience, is segregated into separate tracts designated by separate tract numbers and is more particularly described as follows:

Tract L-2040: West Half ($W\frac{1}{2}$) of the Northwest Quarter ($NW\frac{1}{4}$); Northeast Quarter ($NE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$); West Half ($W\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management. [3]

Tract L-2043: West Half ($W\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$); East Half ($E\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Tract L-2071: Northwest Quarter ($NW\frac{1}{4}$) of the Southwest Quarter ($SW\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Tract L-2072: East Half ($E\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

6. The names of the apparent and presumptive

owners of the said land are set out after each tract number as follows:

Tract L-2040: E. S. McKendry; Florence Lowe Barnes McKendry; Desert Aero, Inc. and Layne & Bowler Corporation.

Tract L-2043: William Emmert Barnes; Florence Lowe Barnes McKendry; Desert Aero, Inc. and Layne & Bowler Corporation.

Tract L-2071: Benjamin C. Hannam and Kathryn May Hannam; E. S. McKendry, also known as E. S. McKenndry, and Florence Lowe Barnes McKendry. [4]

Tract L-2072: E. S. McKendry; Florence Lowe Barnes McKendry; Desert Aero, Inc. and Layne & Bowler Corporation.

7. The State of California and the County of Kern may have or claim an interest in the property by reason of taxes and assessments due and exigible.

8. In addition to the persons named there are or may be others who have or may claim to have some interest in the property to be taken, whose names are unknown to plaintiff and such persons are made parties to this action under the designation "Unknown Owners".

Wherefore, plaintiff demands judgment that the property be condemned and that just compensation

for the taking be ascertained and awarded and for such other relief as may be lawful and proper.

Dated: February 27, 1953.

WALTER S. BINNS,
United States Attorney
A. WEYMANN,
Special Attorney, Lands Division,
Department of Justice.

/s/ By A. WEYMANN,
Attorneys for Plaintiff.

Demand for Jury Trial

Trial by jury of the issues of just compensation is demanded by plaintiff.

Dated: February 27, 1953.

WALTER S. BINNS,
United States Attorney
A. WEYMANN,
Special Attorney, Lands Division,
Department of Justice.

/s/ By A. WEYMANN,
Attorneys for Plaintiff. [5]

[Endorsed]: Filed Feb. 27, 1953.

[Title of District Court and Cause.]

DECLARATION OF TAKING

To the Honorable The United States District Court:

I, the undersigned, Edwin V. Huggins, Assistant Secretary of the Air Force of the United States of America, do hereby make the following declaration by direction of the Secretary of the Air Force:

1. (a) The lands hereinafter described are taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a) and acts supplementary thereto and amendatory thereof, and under the further authority of the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C. 257); the Act of Congress approved August 18, 1890 (26 Stat. 316) as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241) and April 11, 1918 (40 Stat. 518, 50 U.S.C. 171), which acts authorize the acquisition of land for military purposes; the Act of Congress approved August 12, 1935 (49 Stat. 610, 611; 10 U.S.C. 1343a, b and c), which [6] Act authorized the acquisition of land for Air Force Stations and Depots; the National Security Act of 1947 approved July 26, 1947 (61 Stat. 495); the Act of Congress approved June 17, 1950 (Public Law 564, 81st Congress), which act authorizes acquisition of the land, and the Act of Congress approved September 6, 1950 (Public Law 759, 81st Congress), which act appropriated funds for such purposes.

(b) The public uses for which said lands are

taken are as follows: The said lands are necessary adequately to provide for expanding needs and requirements for the Department of the Air Force and other military uses incident thereto. The lands have been selected under the direction of the Secretary of the Air Force for acquisition by the United States for use in connection with Edwards Air Force Base, Kern County, State of California, and for such other uses as may be authorized by Congress or by Executive Order.

2. A general description of the lands being taken is set forth in Schedule "A", attached hereto and made a part hereof, and is a description of part of the lands described in the Complaint in Condemnation filed in the above-entitled cause.

3. The estate taken for said public uses is the fee simple title, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipe lines.

4. A plan showing the lands taken is annexed hereto as Schedule "B" and made a part hereof.

5. The sum estimated by the undersigned as just compensation for the said lands, with all buildings and improvements thereon and all appurtenances thereto and including any and all interests hereby taken in said lands is set forth in Schedule "A" herein, which sum the undersigned causes to be deposited herewith in the registry of the court for the use and benefit of the persons entitled thereto. The undersigned is of the opinion that the ultimate award for said lands probably will be within any limits prescribed by law on the price to be paid therefor. [7]

In witness whereof, the undersigned, the Assistant Secretary of the Air Force, hereunto subscribes his name by direction of the Secretary of the Air Force, this 3rd day of February, 1953, in the City of Washington, District of Columbia.

/s/ E. V. HUGGINS,

Ass't Secretary of the Air Force

SCHEDULE "A"

The land which is the subject matter of this Declaration of Taking aggregates 360.00 acres, more or less, situate and being in the County of Kern, State of California. A description of the lands taken, together with a list of the purported owners thereof and a statement of the sum estimated to be just compensation therefor is as follows:

Tract L-2040: The West Half ($W\frac{1}{2}$) of the Northwest Quarter ($NW\frac{1}{4}$); the Northeast Quarter ($NE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$); the West Half ($W\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, San Bernardino Meridian in the County of Kern, State of California, according to the official plat of the survey of said land on file in the Bureau of Land Management.

Containing 140.00 acres, more or less.

Names and addresses of purported owners: E. S. McKendry, Box 37, Edwards, Calif. Florence Lowe Barnes McKendry, Box 37, Edwards, Calif. Desert Aero, Inc., c/o Bertrand Rhine, 729 Citizens Nat'l Bank Building, Los Angeles, Calif. Layne and Bow-

ler Corp., a Calif. Corporation, address unknown.

Estimated compensation: Thirty-Three Thousand Five Hundred Dollars (\$33,500.00).

Tract L-2043: The West Half ($W\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$); the East Half ($E\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, San Bernardino Meridian, in the County of Kern, State of California, according to the official plat of the survey of said land on file in the Bureau of Land Management.

Containing 100.00 acres, more or less. [9]

Names and addresses of purported owners: William Emmert Barnes, Box 37, Edwards, California. Florence Lowe Barnes McKendry, Box 37, Edwards, California. Desert Aero, Inc., c/o Bertrand Rhine, 729 Citizens Nat'l Bank Bldg., Los Angeles, California. Layne & Bowler, Box 8225, Market Station, Los Angeles, California.

Estimated compensation: Twenty-Nine Thousand Dollars (\$29,000.00).

Tract L-2071: The Northwest Quarter ($NW\frac{1}{4}$) of the Southwest Quarter ($SW\frac{1}{4}$) of Section 20, Township 9, Range 10 West, San Bernardino Meridian, in the County of Kern, State of California, according to the official plat of the survey of said land on file in the Bureau of Land Management.

Containing 40 acres, more or less.

Names and addresses of purported owners: Ben-

jamin C. Hannam and Kathryn May Hannam, Address unknown. E. S. McKendry, also known as E. S. McKenndry, Box 37, Edwards, California. Florence Lowe Barnes McKendry, Box 37, Edwards, California.

Estimated compensation: Two Thousand Dollars (\$2,000.00).

Tract L-2072: The East Half ($E\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, San Bernardino Meridian, in the County of Kern, State of California, according to the official plat of the survey of said land on file in the Bureau of Land Management.

Containing 80.00 acres, more or less. [10]

Names and addresses of purported owners: E. S. McKendry, Box 37, Edwards, California. Florence Lowe Barnes McKendry, Box 37, Edwards, California. Desert Aero, Inc., c/o Bertrand Rhine, 729 Citizens Nat'l Bank Bldg., Los Angeles, California. Layne & Bowler, Box 8225, Market Station, Los Angeles, California.

Estimated compensation: One Hundred Forty Thousand Five Hundred Dollars (\$140,500.00).

The gross sum estimated to be the just compensation for the estates in the lands hereby taken is Two Hundred Five Thousand Dollars (\$205,000.00).

[Endorsed]: Filed Feb. 27, 1953.

ACQUISITION TRACT REGISTER

ACQUISITION TRACT REGISTER

TRACT NO.	ACQUISITION TRACT REGISTER	TRACT NO.	ACQUISITION TRACT REGISTER
2000	2000	2000	2000
2001	2001	2001	2001
2002	2002	2002	2002
2003	2003	2003	2003
2004	2004	2004	2004
2005	2005	2005	2005
2006	2006	2006	2006
2007	2007	2007	2007
2008	2008	2008	2008
2009	2009	2009	2009
2010	2010	2010	2010
2011	2011	2011	2011
2012	2012	2012	2012
2013	2013	2013	2013
2014	2014	2014	2014
2015	2015	2015	2015
2016	2016	2016	2016
2017	2017	2017	2017
2018	2018	2018	2018
2019	2019	2019	2019
2020	2020	2020	2020
2021	2021	2021	2021
2022	2022	2022	2022
2023	2023	2023	2023
2024	2024	2024	2024
2025	2025	2025	2025
2026	2026	2026	2026
2027	2027	2027	2027
2028	2028	2028	2028
2029	2029	2029	2029
2030	2030	2030	2030
2031	2031	2031	2031
2032	2032	2032	2032
2033	2033	2033	2033
2034	2034	2034	2034
2035	2035	2035	2035
2036	2036	2036	2036
2037	2037	2037	2037
2038	2038	2038	2038
2039	2039	2039	2039
2040	2040	2040	2040
2041	2041	2041	2041
2042	2042	2042	2042
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2044	2044	2044	2044
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2046	2046	2046	2046
2047	2047	2047	2047
2048	2048	2048	2048
2049	2049	2049	2049
2050	2050	2050	2050
2051	2051	2051	2051
2052	2052	2052	2052
2053	2053	2053	2053
2054	2054	2054	2054
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2091	2091	2091	2091
2092	2092	2092	2092
2093	2093	2093	2093
2094	2094	2094	2094
2095	2095	2095	2095
2096	2096	2096	2096
2097	2097	2097	2097
2098	2098	2098	2098
2099	2099	2099	2099
2100	2100	2100	2100

SCHEDULE B

U.S. ARMY

PROJECT OWNERSHIP MAP

STATE: CALIFORNIA

COUNTY: KERN

DIVISION: SOUTH PACIFIC

DISTRICT: 10, ANTI-VEHICLE

10th ARMY AREA

LOCATION OF PROJECT

10th ARMY AREA

20th ARMY AREA

TRANSPORTATION FACILITIES

RAILROADS: A T & S

STATE ROADS

FEDERAL ROADS: 195 AND 964

AIRWAYS

ACQUISITION

TOTAL ACRES ACQUIRED

ACRES FOR

ACRES TRANSFERRED TO WAR DEPT

ACRES LEASED TO WAR DEPT

ACRES LESSER INTERESTS

DISPOSAL

TOTAL ACRES DISPOSED OF

ACRES SOLD BY WAR DEPT

ACRES TRANSFERRED BY WAR DEPT

ACRES RETAINED BY GOVT AGCY

ACRES LEASES TERMINATED

ACRES LESSER INTS TERM

LEGEND

NOTE: USE SYMBOLS FROM FIG. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 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1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444,

[Title of District Court and Cause.]

DECREE ON DECLARATION
OF TAKING

There having been filed and presented to the Court by plaintiff, United States of America, a Declaration of Taking in which the fee simple title in and to the real property hereinafter described, was vested in plaintiff, and good cause appearing therefor, the Court finds and decrees as follows:

1. That plaintiff, United States of America, is entitled to acquire the property by eminent domain for use in connection with the Edwards Air Force Base, California, and for such other uses as may be authorized by Congress or by Executive Order.

2. That a Complaint in Condemnation was filed herein at the request of the Assistant Secretary of the Air Force, the authority empowered by law to acquire the land described in said Complaint, and under the direction of the Attorney General of the United States.

3. That in said Complaint in Condemnation and in the Declaration of Taking is a statement showing the authority under which this proceeding [13] was brought and a statement as to the public uses for which said land is being taken and the Assistant Secretary of the Air Force is the person duly authorized and empowered by law to acquire the said land and the Attorney General of the United States is the person authorized by law to direct the institution of this condemnation proceeding.

4. That a statement of the estate or interest in

said land is also shown in said Declaration of Taking, and drawings showing the land taken are attached to and made a part of said Declaration of Taking.

5. That a statement of the amount of money estimated by the Assistant Secretary of the Air Force to be just compensation for the taking of said land, namely, the sum of \$205,000, is shown by said Declaration of Taking, which sum has been deposited into the registry of this Court.

6. That in said Declaration of Taking is a statement to the effect that the estimated ultimate award of damages for the taking of said property, in the opinion of the Assistant Secretary of the Air Force probably will be within any limits prescribed by Congress as the price to be paid therefor and the Court having fully considered the Complaint in Condemnation and the Declaration of Taking and the statutes made and provided, is of the opinion that plaintiff, United States of America, is entitled to the full fee simple title to the estate hereby taken for the public uses in the land hereinafter described, subject to existing easements for public roads and highways, public utilities, railroads and pipe lines.

7. That the said title is being acquired pursuant to and under the authority of the provisions of the Act of Congress approved February 26, 1931 (46 Stat. 1421; 40 U.S.C., Sec. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Act of Congress approved August 1, 1888 (25 Stat. 357; 40 U.S.C., Sec.

257); and the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241) and April 11, 1918 (40 Stat. 518; 50 U.S.C., Sec. 171), which acts authorize [14] the acquisition of land for military purposes; the Act of Congress approved August 12, 1935 (49 Stat. 610, 611; 10 U.S.C., 1343a, b and c), which act authorizes the acquisition of land for air corps stations and depots; the National Security Act of 1947, approved July 26, 1947 (61 Stat. 495); the Act of Congress approved June 17, 1950 (Public Law 564, 81st Congress); and the Act of Congress approved September 6, 1950 (Public Law 759, 81st Congress), which act appropriated funds for such purposes; and acts amendatory thereof or supplementary thereto.

It is therefore ordered, adjudged and decreed:

I.

That there is hereby vested in plaintiff, United States of America, the full fee simple title to the estate herein taken for the public uses in the lands hereinafter described, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

II.

That the land taken and condemned in and by this proceeding is situate in the County of Kern, State of California, and is more particularly described as follows:

Tract L-2040: West Half (W $\frac{1}{2}$) of the North-

west Quarter ($NW\frac{1}{4}$); Northeast Quarter ($NE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$); West Half ($W\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Tract L-2043: West Half ($W\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$); East Half ($E\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Tract L-2071: Northwest Quarter ($NW\frac{1}{4}$) of the Southwest Quarter ($SW\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Tract L-2072: East Half ($E\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

III.

That nothing herein is to be considered as a determination by the Court that the estimate of the Assistant Secretary of the Air Force of the United States of the amount now on deposit, is or is not just compensation for the taking of the said land by plaintiff.

IV.

The Court reserves jurisdiction to enter such further orders and decrees as may be necessary and proper in the premises.

Dated: March 2, 1953.

/s/ LEON R. YANKWICH,
United States District Judge.

Presented by:

WALTER S. BINNS,
United States Attorney

A. WEYMANN,
Special Attorney, Lands Division,
Department of Justice.

/s/ By A. WEYMANN,
Attorneys for Plaintiff. [16]

[Endorsed]: Filed March 2, 1953.

[Title of District Court and Cause.]

PETITION FOR PARTIAL DISTRIBUTION
OF COMPENSATION PURSUANT TO SEC-
TION 258a, TITLE 40, U.S.C.

(Tracts Nos. L-2040, L-2043
and L-2072)

To: The District Court of the United States, in and
for the Southern District of California, North-
ern Division:

The petition of E. S. McKendry, Florence Lowe

Barnes, also known as Pancho Barnes, and William Emmert Barnes, respectfully shows:

1. That they were, until the 27th day of February, 1953, the owners in fee simple of the hereinafter described property and entitled to the compensation to be paid therefor upon the condemnation and taking of said property by plaintiff in the above entitled action.

2. That on the 27th day of February, 1953, as your petitioners are informed and believe and therefore allege, plaintiff filed in this action its Declaration of Taking whereby it took and condemned the hereinafter described property, and simultaneously therewith deposited into the registry of the Court the estimated just compensation therefor.

3. That your petitioners are informed and believe and therefore [17] allege that the sum deposited into the registry of the Court as the estimated just compensation for the hereinafter described property is the sum of \$203,000.

4. That your petitioners are informed and believe and therefore allege that the sum of \$185,000 can now be paid out of the funds deposited into the registry of the Court for the hereinafter described property, without prejudice to the rights of plaintiff or of any other party to this proceeding.

5. That at the time title to the hereinafter described property vested in plaintiff by the filing of its Declaration of Taking as aforesaid, Tracts Nos. L-2043 and L-2072, as hereinafter described, were

subject to a Deed of Trust dated January 30, 1950, executed by William Emmert Barnes, a single man and one of the petitioners, to Farmers and Merchants Trust Company of Long Beach, as Trustee, to secure an indebtedness of \$13,000 in favor of Farmers and Merchants Bank of Long Beach, a corporation, and any other amounts payable under the terms thereof, recorded April 7, 1950 in Book 1558, page 371 of Official Records, and that by reason of the filing of plaintiff's Declaration of Taking aforesaid, the indebtedness secured by the aforesaid Trust Deed was transferred to the fund on deposit in the registry of the Court and is payable out of said fund.

6. That the property affected by this petition is located in the County of Kern, State of California, and is fully described as follows:

Tract L-2040: West Half ($W\frac{1}{2}$) of the Northwest Quarter ($NW\frac{1}{4}$); Northeast Quarter ($NE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$); West Half ($W\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Tract L-2043: West Half ($W\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$); East Half ($E\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the

survey of said land on file in the Bureau of Land Management.

Tract L-2072: East Half ($E\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Wherefore, your petitioners severally voluntarily appear in this action and waive service of process and pray an order of Court as follows:

(a) Directing the Clerk of the Court to pay out of the funds on deposit in the registry of the Court as aforesaid, the sum of \$12,246.24 to Farmers and Merchants Bank of Long Beach, a corporation, in full satisfaction and discharge of the indebtedness secured by the aforesaid Deed of Trust executed by William Emmert Barnes to Farmers and Merchants Trust Company of Long Beach, as Trustee.

(b) Directing the Clerk of the Court to pay the balance of said sum of \$185,000, to-wit, the sum of \$172,753.76 to E. S. McKendry, as trustee for your petitioners, and said order may provide that said payment so made, together with the payment made to discharge the aforesaid obligation to Farmers and Merchants Bank of Long Beach, shall be credited to plaintiff on account of the compensation to be hereafter awarded by judgment to be entered in this proceeding, determining the compensation payable by plaintiff for the condemnation and taking of the aforesaid tracts of land. That by presenting this petition your petitioners covenant and agree, and the order to [19] be entered hereon shall so

provide, that plaintiff shall in no wise be responsible for the proper application or distribution of the moneys paid to said E. S. McKendry, pursuant to this petition.

Dated: March 10, 1953.

/s/ E. S. McKENDRY,

/s/ PANCHO BARNES,

Florence Lowe Barnes, also known
as Pancho Barnes

/s/ WILLIAM EMMERT BARNES

State of California,

County of Los Angeles—ss:

E. S. McKendry, Florence Lowe Barnes, also known as Florence Lowe Barnes McKendry, and William Emmert Barnes, each being by me first duly sworn, upon oath depose and say: That they are defendants in the above entitled action and the petitioners who executed the above petition for partial distribution of compensation; that they have each read the foregoing petition and know the contents thereof; that the same is true of their own knowledge except as to matters which are therein stated upon information and belief and as to those matters that they believe it to be true.

/s/ E. S. McKENDRY

/s/ PANCHO BARNES,

Florence Lowe Barnes, also known
as Pancho Barnes.

/s/ WILLIAM EMMERT BARNES

Subscribed and sworn to before me this 10th day of March, 1953.

[Seal] /s/ VIOLET O. RYBURN

Notary Public in and for said County and State.

Granting of the foregoing Petition is hereby consented to.

WALTER S. BINNS,
United States Attorney

A. WEYMANN,
Special Attorney, Lands Division,
Department of Justice.

/s/ By A. WEYMANN,
Attorneys for Plaintiff. [21]

[Endorsed]: Filed March 11, 1953.

[Title of District Court and Cause.]

ORDER ON PETITION FOR PARTIAL DISTRIBUTION OF COMPENSATION PURSUANT TO SECTION 258a, TITLE 40, USC.

(Tracts Nos. L-2040, L-2043 and L-2072)

There having been filed and presented to the Court the verified petition of E. S. McKendry, Florence Lowe Barnes, also known as Pancho Barnes, and William Emmert Barnes, from which it appears to the satisfaction of the Court that they were, until the filing of plaintiff's Declaration of Taking in the

above entitled action, the owners in fee simple of the hereinafter described property and entitled to the compensation to be paid for the condemnation and taking of said property, and

It further appearing from said petition that plaintiff has deposited into the registry of the Court with said Declaration of Taking, the sum of \$203,000 for the said property described in said petition and hereinafter particularly described, and that the sum of \$185,000 can now be paid out of said deposit to petitioners or for their benefit, without prejudice to the rights of plaintiff or any other parties to the proceeding, and good cause appearing therefor,

It is now ordered that the sum of \$12,246.24 be paid to Farmers and Merchants Bank of Long Beach, a corporation, in full satisfaction and discharge of that certain indebtedness secured by a Deed of Trust executed by William Emmert Barnes to Farmers and Merchants Trust Company of Long Beach, dated January 30, 1950 and recorded April 7, 1950, which indebtedness affected Tracts Nos. L-2043 and L-2072 as hereinafter described, and that there be paid the further sum of \$172,753.76 to E. S. McKendry, as trustee for the petitioners, on account of the compensation payable for the condemnation and taking of Tracts Nos. L-2040, L-2043 and L-2072, as hereinafter described, and

It is further ordered that the total sum of \$185,000 so paid be credited to plaintiff on account of any compensation to be hereafter awarded by a judgment entered in this proceeding, determining

the compensation payable by plaintiff for the condemnation and taking of the hereinafter described tracts of land, and

It is further ordered and adjudged that plaintiff shall not be liable for the proper application or distribution of the moneys paid to the said E. S. McKendry pursuant to this Order.

The property affected by this Order of Partial Distribution of Compensation is situate in the County of Kern, State of California, and is more particularly described as:

Tract L-2040: West Half ($W\frac{1}{2}$) of the Northwest Quarter ($NW\frac{1}{4}$); Northeast Quarter ($NE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$); West Half ($W\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Tract L-2043: West Half ($W\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$); East Half ($E\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Tract L-2072: East Half ($E\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the offi-

cial plat of the survey of said land on file in the Bureau of Land Management.

Dated: March 11, 1953.

/s/ LEON R. YANKWICH,
United States District Judge.

Presented by:

WALTER S. BINNS,
United States Attorney

A. WEYMANN,
Special Attorney, Lands Division,
Department of Justice.

/s/ By A. WEYMANN,
Attorneys for Plaintiff.

Approved as to form and substance:

/s/ E. S. McKENDRY,

/s/ PANCHO BARNES,

Florence Lowe Barnes, also known as
Pancho Barnes,

/s/ WILLIAM EMMERT BARNES

Petitioners. [24]

[Endorsed]: Filed March 11, 1953.

[Title of District Court and Cause.]

RECEIPT AND PARTIAL SATISFACTION

(Tracts Nos. L-2040, L-2043 and L-2072)

Receipt of United States District Court check
No. 18472 in the sum of \$172,753.76, payable to the

order of E. S. McKendry, Trustee, is hereby acknowledged.

Payment of said sum of \$172,753.76 is received on account of the just compensation payable for the condemnation and taking of property in the above captioned proceeding, which property is particularly described in that certain Order of the United States District Court dated March 11, 1953, in the above entitled action.

Dated: March 13, 1953.

/s/ E. S. McKENDRY,
as Trustee.

Witness: Signed, [Illegible], Special Attorney,
Department of Justice. [25]

[Endorsed]: Filed March 13, 1953.

[Title of District Court and Cause.]

RECEIPT AND FULL SATISFACTION

(Tracts Nos. L-2040, L-2043 and L-2072)

Receipt of United States District Court check No. 18471 in the sum of \$12,246.24 is hereby acknowledged in full satisfaction of that certain obligation secured by a Deed of Trust in the amount of \$13,000, executed by William Emmert Barnes, a single man, on January 30, 1950, to Farmers and Merchants Trust Company of Long Beach, a California corporation, as trustee, in favor of Farmers and Merchants Bank of Long Beach, a corporation,

and any other amounts payable under the terms thereof, recorded April 7, 1950 in Book 1558, page 371 of Official Records, Kern County, California.

Dated: March 16, 1953.

FARMERS & MERCHANTS BANK
OF LONG BEACH,

/s/ By [Illegible]

Vice President. [26]

[Endorsed]: Filed March 20, 1953.

[Title of District Court and Cause.]

PETITION FOR PARTIAL DISTRIBUTION
OF COMPENSATION PURSUANT TO
SECTION 258a, TITLE 40, USC.

(Tracts Nos. L-2040, L-2043 and L-2072)

To: The District Court of the United States, in and
for the Southern District of California, North-
ern Division:

The petition of E. S. McKendry, William Emmert Barnes and Florence Lowe Barnes, also known as Pancho Barnes, respectfully shows:

1. That E. S. McKendry and William Emmert Barnes, were, until the 27th day of February, 1953, the owners in fee simple of the property hereinafter described and that Florence Lowe Barnes, also known as Pancho Barnes, has an interest in the compensation payable for the taking of said property by reason of the ownership of certain im-

provements thereon, subject to the payment and satisfaction of all valid liens against said property.

2. That on February 27, 1953 plaintiff deposited into the registry of this Court the sum of \$203,000, together with its Declaration of Taking pursuant to the provisions of Title 40, Section 258a, U.S.C., and that heretofore and pursuant to a petition filed herein, [27] the sum of \$185,000 was paid to or for the benefit of your petitioners on account of the compensation payable for said property, leaving a balance of \$17,000 now available for payment to the parties who may be entitled thereto.

3. That the Department of Employment of the State of California claims a lien in the sum of \$1835.21, with interest at the rate of \$6.57 per month after March 31, 1953, under the Unemployment Insurance Act of the State of California.

That the Bureau of Internal Revenue of the Treasury Department of the United States claims a lien for \$7549.15, with interest to be added at the rate of \$1.18 per day from March 24, 1953, for Federal Insurance Contributions and for Withholding Tax alleged to be due from your petitioner, Florence Lowe Barnes, also known as Pancho Barnes.

4. That your petitioners, without admitting the validity of said liens against the hereinafter described property and against the fund on deposit in the registry of the Court, desire to pay under protest and have discharged, the aforesaid liens out of the funds remaining on deposit in the registry of

the Court for the condemnation and taking of the property hereinafter described.

5. The property referred to in this petition is situate in the County of Kern, State of California, and is particularly described as:

Tract L-2040: West Half ($W\frac{1}{2}$) of the Northwest Quarter ($NW\frac{1}{4}$); Northeast Quarter ($NE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$); West Half ($W\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management. [28]

Tract L-2043: West Half ($W\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$); East Half ($E\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Tract L-2072: East Half ($E\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Wherefore, your petitioners pray an order directing the Clerk of the Court to pay out of the funds now remaining on deposit in the registry of the Court in this proceeding, the following sums:

1. To the order of the Director of Internal Revenue, the sum of\$7,560.95
 2. To the order of the State of California,
Department of Employment, the sum of 1,841.78
- the said Order to provide that the aforesaid sums so paid shall be credited to plaintiff, United States of America, on account of the compensation to be hereafter awarded to your petitioners, or any of them, for the condemnation and taking of the above described property in this proceeding.

Dated: March 26, 1953.

/s/ E. S. McKENDRY,

/s/ WILLIAM EMMERT BARNES,

/s/ PANCHO BARNES,

Florence Lowe Barnes, also known
as Pancho Barnes. [29]

State of California,
County of Los Angeles—ss.

E. S. McKendry, William Emmert Barnes, and Florence Lowe Barnes, also known as Pancho Barnes, each being by me first duly sworn, upon oath depose and say: That they are defendants in the above entitled action and the petitioners who executed the above petition for partial distribution of compensation; that they have each read the foregoing petition and know the contents thereof; that the same is true of their own knowledge except as to matters which are therein stated upon infor-

mation and belief and as to those matters that they believe it to be true.

/s/ E. S. McKENDRY,

/s/ WILLIAM EMMERT BARNES,

/s/ PANCHO BARNES,

Florence Lowe Barnes also known
as Pancho Barnes.

Subscribed and sworn to before me this 26th day
of March, 1953.

[Seal] /s/ VIOLET O. RYBURN,

Notary Public in and for said County and State.

Granting of the foregoing Petition is hereby con-
sented to.

WALTER S. BINNS,

United States Attorney

A. WEYMANN,

Special Attorney, Lands Division,
Department of Justice.

/s/ By A. WEYMANN,

Attorneys for Plaintiff. [30]

[Endorsed]: Filed March 31, 1953.

[Title of District Court and Cause.]

ORDER ON PETITION FOR PARTIAL DISTRIBUTION OF COMPENSATION PURSUANT TO SECTION 258a, TITLE 40, USC
(Tracts Nos. L-2040, L-2043 and L-2072)

There having been filed and presented to the Court the verified petition of E. S. McKendry, William Emmert Barnes and Florence Lowe Barnes, also known as Pancho Barnes, for a partial distribution of the estimated compensation for the hereinafter described property, heretofore deposited into the registry of the Court, to the parties and in the manner as in said petition set forth, and Good Cause Appearing Therefor,

It Is Ordered that there be paid out of the funds remaining on deposit in the registry of the Court the following sums to the following named parties:

(a) To the order of the Director of Internal Revenue, the sum of: \$7,560.95.

(b) To the order of the State of California, Department of Employment, the sum of: \$1,841.78.

And It Is Further Ordered and Adjudged that the aforesaid sums so paid shall be credited to plaintiff, United States of America, on [31] account of the compensation to be awarded to said petitioners, or any of them, for the condemnation and taking of the property referred to in said petition and described as follows:

Those certain tracts of land situate in the County of Kern, State of California, particularly described as:

Tract L-2040: West Half ($W\frac{1}{2}$) of the Northwest Quarter ($NW\frac{1}{4}$); Northeast Quarter ($NE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$); West Half ($W\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Tract L-2043: West Half ($W\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$); East Half ($E\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Tract L-2072: East Half ($E\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Dated: March 31, 1953.

/s/ LEON R. YANKWICH,

United States District Judge.

Presented by:

WALTER S. BINNS,

United States Attorney.

A. WEYMANN,

Special Attorney, Lands Division,

Department of Justice.

/s/ By A. WEYMANN,

Attorneys for Plaintiff. [32]

[Endorsed]: Filed March 31, 1953.

[Title of District Court and Cause.]

RECEIPT

(Tracts Nos. L-2040, L-2043 and L-2072)

Receipt of United States District Court check No. 18607, in the sum of \$7,560.95, to the order of Director of Internal Revenue, is hereby acknowledged in satisfaction of those certain claims of the Bureau of Internal Revenue, Treasury Department, against Florence Lowe Barnes, doing business as Pancho's Rancho Oro Verde, as set forth in that certain statement dated March 17, 1953 from Kalman H. Helgason, Internal Revenue Agent.

Dated: April 15, 1953.

BUREAU OF INTERNAL
REVENUE,

/s/ By FRED H. WENDELBURG,
Internal Revenue Agent. [33]

[Endorsed]: Filed April 17, 1953.

[Title of District Court and Cause.]

RECEIPT

(Tracts Nos. L-2040, L-2043 and L-2072)

Receipt of United States District Court check No. 18608, in the sum of \$1,841.78, to the order of State of California, Department of Employment, is hereby acknowledged in satisfaction of those certain claims of the State of California under

Account No. 046-0232, as set forth in the statement under date of March 17, 1953, from C. Homer Hopkins, Acting Auditor in Charge.

Dated: April 9, 1953.

STATE OF CALIFORNIA, DEPARTMENT OF EMPLOYMENT,

/s/ By JAMES COWSILL,

Auditor in Charge

[34]

[Endorsed]: Filed April 17, 1953.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR AN ORDER OF
IMMEDIATE POSSESSION

To the Defendants E. S. McKendry; Florence Lowe Barnes, also known as Pancho Barnes; William Emmert Barnes; Florence Lowe Barnes, doing business as Pancho's Rancho Oro Verde:

You and Each of You Will Please Take Notice that the plaintiff, United States of America, has heretofore filed a Complaint in Condemnation to take and condemn the full fee simple title to the property described in said Complaint, and particularly described in Schedule "A" attached hereto and made a part hereof by reference, and that thereafter, to-wit on February 27, 1953, the plaintiff, United States of America, filed its Declaration of Taking of the full fee simple title to the property described in Schedule "A" annexed hereto

and simultaneously deposited into the Registry of the Court the estimated just compensation for the property so taken and condemned for the use and benefit of the parties entitled thereto; and that thereupon title to said property as set forth in the Declaration of Taking became vested in the plaintiff pursuant to the provisions of Section 258(a) of Title 40 U.S.C.A.; [35]

And You and Each of You Will Take Further Notice that on the 9th day of September, 1953, at 10 o'clock in the forenoon of that day, in the Courtroom of the United States District Court in the Post Office and Court House Building, in the City of Fresno, State of California, plaintiff will appear and apply to the Court for an Order for Immediate Possession of the lands taken in this cause.

That as grounds for the granting of said Order for Immediate Possession plaintiff states that the Assistant Secretary of the Air Forces has found and determined that it is necessary and advantageous to the interest of the plaintiff to acquire such possession, and that plaintiff is entitled to such possession as a matter of right.

Dated: Augut 27, 1953.

LAUGHLIN E. WATERS,

United States Attorney.

A. WEYMANN,

Special Attorney, Lands Division,
Department of Justice.

/s/ By A. WEYMANN,

Attorneys for Plaintiff. [36]

SCHEDULE "A"

The property affected by the annexed Notice of Motion for an Order of Immediate Possession is situate in the County of Kern, State of California, and, for convenience, is segregated into separate tracts designated by separate tract numbers and is more particularly described as follows:

Tract L-2040: West Half ($W\frac{1}{2}$) of the Northwest Quarter ($NW\frac{1}{4}$); Northeast Quarter ($NE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$); West Half ($W\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Tract L-2043: West Half ($W\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$); East Half ($E\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Tract L-2071: Northwest Quarter ($NW\frac{1}{4}$) of the Southwest Quarter ($SW\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Tract L-2072: East Half ($E\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$) of Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the offi-

cial plat of the survey of said land on file in the Bureau of Land Management. [37]

Affidavit of Service by Mail attached. [38]

[Endorsed]: Filed August 27, 1953.

[Title of District Court and Cause.]

NOTICE OF MOTION TO SET ASIDE DECLARATION OF TAKING AND TO VACATE AND SET ASIDE EX PARTE JUDGMENT

To the Plaintiff's attorneys, Laughlin E. Waters and A. Weymann:

You Will Please Take Notice that on Monday, September 21, 1953, at the hour of 10:00 o'clock a.m. of said day, or as soon thereafter as the matter can be heard, in the United States Courtroom, U. S. Post Office and Court House, Fresno, California, the defendants, Pancho Barnes, E. S. McKendry and William Emmert Barnes, will present the within Motion to Set Aside Declaration of Taking and to Vacate and Set Aside Ex Parte Judgment.

Dated at Los Angeles, California, this 5th day of September, 1953.

/s/ PANCHO BARNES

/s/ E. S. McKENDRY

/s/ WILLIAM EMMERT BARNES

Defendants in Propria Persona. [40]

[Title of District Court and Cause.]

MOTION TO SET ASIDE THE DECLARATION OF TAKING DATED FEBRUARY 27, 1953, AND TO VACATE AND SET ASIDE THE EX PARTE JUDGMENT ENTERED THEREON, DATED MARCH 2, 1953.

Come now the defendants, Pancho Barnes, E. S. McKendry, and William Emmert Barnes, and move this Honorable Court set aside the Declaration of Taking dated February 27, 1953, and to vacate and set aside the ex parte judgment entered thereon, dated March 2, 1953, for the following reasons:

I. That the estimate of "just compensation" was not arrived at in good faith and that the declaration and deposit did not comply with the requirements of the statute pertaining thereto.

II. That the Government wilfully and knowingly and deliberately acting in bad faith committed an arbitrary act against the defendants when the Government estimated and deposited a mere nominal sum and were guilty of noncompliance with statutory requirements.

This Motion will be based upon the "Declaration of Taking" on file and the "Decree on the Declaration of Taking"; on testimony [41] at the time of hearing; affidavits making a prima facie showing of noncompliance with the statute; exhibits prov-

ing bad faith in the manner of appraisal of the lands and buildings; and other and sundry documents in support of the Motion.

/s/ PANCHO BARNES

/s/ E. S. McKENDRY

/s/ WILLIAM EMMERT BARNES

Defendants in Propria Persona. [42]

[Endorsed]: Filed September 5, 1953.

[Title of District Court and Cause.]

MOTION FOR TEMPORARY RESTRAINING ORDER

Comes now the plaintiff United States of America and moves the court for a Temporary Restraining Order restraining the defendants E. S. McKendry, Florence Lowe Barnes, also known as Florence Lowe Barnes McKendry, also known as Pancho Barnes, and William Emmert Barnes, and their respective attorneys, agents, servants, employees and all persons acting by, through, or under them, or either of them, or by or through their Order, from erecting or causing to be erected or continuing to erect any building, structure, or improvement of any description upon any portion of the premises described in plaintiff's complaint and its declaration of taking on file herein.

Said motion is made upon the following grounds:

1. That title to the said property upon which

said defendants are erecting and will continue to erect buildings, structures, and improvements, unless restrained, vested in the United States of America by the filing of its declaration of taking on February 23, 1953, and the deposit into the registry of this court of the estimated just compensation of \$205,000 for said property [43] of which the said defendants and each of them had due notice;

2. That without the consent and against the will of the United States of America the said defendants and each of them have remained in possession of said property since the filing of plaintiff's said declaration of taking and have started, and will, unless restrained by the Court, complete the erection of certain valuable buildings and improvements on said property;

That the continuation of said acts by the said defendants will cause immediate and irreparable injury, loss, or damage to the United States of America in that it will be put to additional expense for the removal and demolition of said buildings and structures on said land, in order to construct the airplane runway for which said property was acquired; and the erection of additional buildings and structures on said property will subject the United States of America to additional claims for damages for the acquisition and removal of such additional structures and improvements now in the course of erection.

Notice of this application and a hearing before

entering a Temporary Restraining Order should not be required because

(a) each day of delay in restraining the continuance of the acts complained of as hereinabove set forth will increase the cost to the United States of America in removing the obstructions to the construction of its aforesaid airplane runway; and

(b) the said defendants have known for more than six months last past that plaintiff required the use of said property for the construction of its said airplane runway, and that such construction would necessitate the demolition and removal of existing structures.

3. Said motion will be made upon all of the files and records in this proceeding; the affidavit of Marcus B. Sacks, verified February 1, 1954; the affidavit of Lynn J. Buttcane, verified January 29, 1954; the affidavit of Irvin H. Smith, verified January 29, 1954; the affidavit of Henry W. Yagel, verified January 29, 1954; the affidavit of Marion J. Akers, verified January 29, 1954; and the affidavit of August Weymann, verified February 2, 1954.

Dated: February 2, 1954. [44]

LAUGHLIN E. WATERS,
United States Attorney.

/s/ By A. WEYMANN,
Attorneys for Plaintiff,
United States of America. [45]

AFFIDAVIT

State of California,
County of Los Angeles—ss.

Marcus B. Sacks, Lieutenant Colonel USAF, Edwards Air Force Base, being first duly sworn, deposes and says:

That he is Staff Judge Advocate Headquarters, Air Force Flight Test Center, Edwards Air Force Base, California; that he is familiar with the property shown on the photograph marked Exhibit No. 1 attached hereto; that the area designated as "A" on said exhibit is the site of a dance hall on the subject property which was destroyed by a fire which occurred November 14, 1953;

That the building identified and shown on said photograph marked "B" did not exist at the time of said fire nor at the time of the filing of plaintiff's declaration of taking in this action; that as appears from the affidavit of Colonel Marion J. Akers attached hereto, said building is new construction placed on the premises after November 14, 1953; that said construction was not made by or with the consent of any agency of the United States of America; that the [46] attached aerial photograph, Exhibit No. 1, is an official photograph of the United States Air Force and was taken January 28, 1954.

/s/ MARCUS B. SACKS

Subscribed and sworn to before me this 1st day of February, 1954.

[Seal] /s/ MARY N. DONETTI,

Notary Public in and for said County and State.



EXHIBIT NO. 1

AFFIDAVIT

Of Marion J. Akers, Colonel, 4784A, HQ, Air Force Flight Test Center, Edwards Air Force Base, California.

Marion J. Akers, Colonel, USAF, being duly sworn according to law deposes and says as follows:

On 29 January 1954, at approximately 1000 hours, Colonel Irvin H. Smith, Lt. Colonel Henry W. Yagel, A/1C Lynn J. Buttane and I went to the Pancho Barnes property to check on some new construction that had been reported in progress.

Upon arrival at the property we inquired for Pancho or Mr. McKendry and were advised that they were not present, and when we asked who was in charge during their absence we were informed that "Harry", a bartender, was. Upon contacting "Harry", the bartender, he introduced himself as Mr. Harry Goff and, in answer to the question, stated that he guessed he was in charge during Pancho's and Mr. McKendry's absence. I introduced Mr. Goff to the rest of the party and informed him that we had been requested by the United States Attorney's Office to check on some new construction that was supposedly in progress on the property. I told him that we had been asked to do this and to also secure pictures. I asked him if we could see the new construction and take pictures; he stated he guessed it was all right and escorted us to the area.

Upon arriving at the new construction area I

again asked Mr. Goff if we could take pictures of it and he replied to the effect that he guessed we had better not since he did not know what Pancho's feelings might be on the matter, and he felt it best that we did not take pictures and asked if we could come back the next day to get the pictures if Pancho would permit it. The construction area was adjacent to the swimming pool on the west side and consisted of an area being inclosed which was approximately eighteen (18) feet wide and seventy (70) to seventy-five (75) feet long. It was adjacent to the existing structure which apparently houses the dining room and a small bar. The concrete slab, over which it was being built, appeared to have been in place for some time. At the end furthest from the dining room and bar there was an area which, according to Mr. Goff, was to be built up into a big fireplace; the rest of the area would be used as a dance floor. The construction appeared to be approximately fifty (50%) per cent complete. A considerable amount of what appeared to be scrap lumber had been used in the construction and about the only new material appeared to be some 2x6's, used as studding, and a plastic covered screen which was used for the roof. I asked Mr. Goff if he were the carpenter doing the building, and he stated he was not; that there were a couple of ranch hands who were [49] carpenters that had been working on it but were not there at the time. The walls to the bottom of the eaves I would estimate to be in the neighborhood of eight (8) feet; the roof was a pitched roof. The portion

of the walls that appeared to be nearly finished consisted of various sized pieces of plywood, and other used lumber.

After looking around the area for approximately ten (10) minutes we departed and I asked Mr. Goff to advise Pancho upon her return that we had been there, and asked him to advise her why we had been there.

/s/ MARION J. AKERS

Subscribed and sworn to before me this 29th day of January, 1954.

[Seal] MARCUS B. SACKS

Lt. Colonel, USAF, Staff Judge Advocate, Hq., Air Force Flight Test Center, Edwards Air Force Base, Calif. [50]

AFFIDAVIT

Of A/1C Lynn J. Buttane, AF 19 408 466, HQ, Air Force Flight Test Center, Edwards Air Force Base, California.

Lynn J. Buttane, Airman First Class, USAF, being duly sworn according to law deposes and says as follows:

I have read the affidavit, dated 29 January 1954, of Colonel Marion J. Akers, concerning a visit to the ranch of Pancho Barnes, and corroborate the facts set forth therein.

/s/ LYNN J. BUTTCANE

Subscribed and sworn to before me this 29th day of January, 1954.

[Seal] /s/ MARCUS B. SACKS

Lt. Colonel, USAF, Staff Judge Advocate, Hq., Air Force Flight Test Center, Edwards Air Force Base, Calif. [51]

AFFIDAVIT

Of Irvin H. Smith, Colonel, 2867A, HQ., Air Force Flight Test Center, Edwards Air Force Base, California.

Irvin H. Smith, Colonel, USAF, being duly sworn according to law deposes and says as follows:

I have read the affidavit, dated 29 January 1954, of Colonel Marion J. Akers, concerning a visit to the ranch of Pancho Barnes, and corroborate the facts set forth therein.

/s/ IRVIN H. SMITH

Subscribed and sworn to before me this 29th day of January, 1954.

[Seal] /s/ MARCUS B. SACKS,

Lt. Colonel, USAF, Staff Judge Advocate, Hq., Air Force Flight Test Center, Edwards Air Force Base, Calif. [52]

AFFIDAVIT

Of Henry W. Yagel, Lt. Colonel, AO 914 704 HQ., 6510th Installations Group, Edwards Air Force Base, California.

Henry W. Yagel, Lt. Colonel, USAF, being duly sworn according to law deposes and says as follows:

I have read the affidavit, dated 29 January 1954, of Colonel Marion J. Akers, concerning a visit to the ranch of Pancho Barnes, and corroborate the facts set forth therein. The new building under construction set forth in Colonel Akers' statement was not in existence during and immediately after the Pancho Barnes fire, which occurred on 14 November 1953.

/s/ HENRY W. YAGEL

Subscribed and sworn to before me this 29th day of January, 1954.

[Seal] MARCUS B. SACKS,
Lt. Colonel, USAF, Staff Judge Advocate, Hq., Air
Force Flight Test Center, Edwards Air Force
Base, Calif. [53]

AFFIDAVIT OF AUGUST WEYMANN IN
SUPPORT OF APPLICATION FOR TEM-
PORARY RESTRAINING ORDER

State of California,
County of Los Angeles—ss.

August Weymann, being first duly sworn, deposes and says:

That he is an Assistant United States Attorney having immediate charge of the prosecution of the above entitled condemnation proceeding for the plaintiff, and that he is familiar with the facts herein set forth.

The above entitled action was filed February 27,

1953, to acquire the property therein described and hereinafter referred to for military purposes in connection with the expansion of the Edwards Air Force Base in Kern County, California.

That coincident with the filing of the complaint plaintiff filed its declaration of taking for four tracts of land comprising all of Section 20, Township 9 North, Range 10 West, San Bernardino Meridian, in the County of Kern, State of California, and simultaneously deposited into the registry of the court the sum of \$205,000 as the estimated just compensation to be paid therefor; [54] that thereupon this Court made its decree on said declaration of taking wherein it was adjudged and decreed that the full fee simple title to said land is vested in the United States of America, subject, however, to existing easements for public roads and highway, public utilities, railroads, and pipe lines. Said decree was duly entered March 2, 1953; that thereupon and thereafter and pursuant to petitions to this Court made by E. S. McKendry, Florence Lowe Barnes, also known as Pancho Barnes, and William Emmert Barnes, as the ostensible former owners of said lands, the sum of \$194,402.72 was paid out of the registry of the court to or for the account of the above named defendants on account of just compensation for the taking of said property, which the said defendants have ever since retained; that said payments were made during the months of March and April of 1953; that said defendants have ever since remained and now remain in possession and occupancy of said premises

notwithstanding the vesting of title in plaintiff as aforesaid.

That on August 27, 1953, plaintiff served on the aforesaid defendants its notice of motion for immediate possession of said property; that said motion came on for hearing before the Honorable Campbell E. Beaumont, one of the Judges of this Honorable Court, on September 21, 1953, the above named defendants appearing in opposition to said motion and resisting the same; that thereupon said motion was continued for further hearing to October 27, 1953, when it was again opposed by the above named defendants, and still remains undetermined; that thereafter and on or about November 14, 1953, and while the said defendants still remained in possession and occupancy of said premises and the buildings thereon, a fire occurred which destroyed one of the buildings thereon; that thereafter the said defendants commenced the construction and erection of new buildings and structures on the said premises, and as affiant is informed by personnel of the Edwards Air Force Base, whose affidavits are annexed hereto and made a part of plaintiff's motion for a temporary restraining order, will continue and complete such construction work unless restrained by this Honorable Court.

That annexed hereto and made a part of this affidavit are true copies of [55]

- (a) Plaintiff's complaint in condemnation;
- (b) Decree on declaration of taking entered by this Court;
- (c) Petition of E. S. McKendry, Florence Lowe

Barnes, and William Emmert Barnes, for payment of funds out of the registry of the court on account of the compensation payable for the condemnation and taking of the property; and

(d) Order of this Court directing the payment of the sum of \$185,000 to or for the account of the said defendants, dated March 11, 1953.

That as more fully appears from the testimony taken on plaintiff's application for immediate possession, the subject property lies on the center line of the extension of the new test runway presently under construction for the Air Force Flight Test Center at Edwards Air Force Base, California, and that to complete the runway and to make available for use in connection therewith a two-mile clear zone, it will be necessary to remove all obstructions to flight and safety in connection with the operations of the Air Force Flight Test Center.

That if defendants are permitted to continue with the construction and erection of further improvements thereon, the cost of removing the obstructions to plaintiff's proposed runway will be substantially increased.

/s/ A. WEYMANN,
Affiant.

Subscribed and sworn to before me this 2nd day of February, 1954.

[Seal] /s/ ALBERT N. MINTON,
Notary Public in and for said County and State.

[Endorsed]: Filed February 2, 1954.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE WHY TEMPORARY RESTRAINING ORDER SHOULD NOT ISSUE

The above entitled cause having come on to be heard upon plaintiff's motion for a temporary restraining order, supported by affidavits annexed thereto; and

It appearing to the satisfaction of the Court that a temporary restraining order preliminary to hearing upon motion for a preliminary injunction should issue because immediate and irreparable injury, loss, and damage will result to the plaintiff, in that the defendants hereinafter named are constructing upon the property of the plaintiff without its consent buildings and structures and will continue so to do unless restrained, which the plaintiff will be obliged to remove and demolish for the construction of an airplane runway of the Air Flight Test Center at Edwards Air Base, California, thereby causing increased cost and damage to the plaintiff in the removal and demolition of obstructions in the path of plaintiff's runway;

Now, Therefore, on motion of the plaintiff,

It Is Ordered that the defendants Florence Lowe Barnes, also known [72] as Florence Lowe Barnes McKendry, also known as Pancho Barnes; E. S. McKendry, and each of them, be and appear before the above entitled court in the court room of the

Honorable Leon R. Yankwich, a Judge of said court, in the United States Post Office and Court House, at Fresno, California, at ten o'clock in the forenoon of Friday, February 5, 1954, or as soon thereafter as counsel can be heard, then and there to show cause, if any they have, why a temporary injunction should not issue restraining them and each of them, their attorneys, agents, servants, employees, and all persons acting by, through, or under them, or any of them, or by or through their order, from constructing or continuing with the construction of any building, structure, or improvement of any kind or character and any part of that certain real property described as Section 20, Township 9 North, Range 10 West, S.B.B.M., according to the official plat of the survey of said land on file in the Bureau of Land Management. Said property being located in the County of Kern, State of California; and good cause appearing

It Is Further Ordered that service of a copy of this order, plaintiff's motion and the supporting affidavits attached thereto, made on the defendants E. S. McKendry, Pancho Barnes, and William Emmert Barnes at or before 12 o'clock noon on February 4, 1954, shall be sufficient notice of this order, such service to be made by delivering a copy of this order, plaintiff's motion and the supporting affidavits, to one or more of said defendants upon the premises above described, and if none of the said defendants can be found on said premises, by de-

livering said copies to any person of suitable age found on said premises.

Dated: February 2nd, 1954, at 3:15 o'clock p.m.

/s/ LEON R. YANKWICH,
United States District Judge.

Presented by:

LAUGHLIN E. WATERS,
United States Attorney,

/s/ By A. WEYMANN,
Assistant United States Attorney,
Attorneys for Plaintiff,
United States of America. [73]

[Endorsed]: Filed February 2, 1954.

[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS

To the Plaintiff's Attorneys, Laughlin E. Waters
and A. Weymann:

You will please take notice that on Monday, September 21, 1953, at the hour of 10:00 o'clock a.m. of said day, or as soon thereafter as the matter can be heard, in the United States Courtroom, U.S. Post Office & Court House, Fresno, California, the defendants, Pancho Barnes, E. S. McKendry and William Emmert Barnes, will present the within Motion To Dismiss.

Dated at Los Angeles, California, this 5th day of September, 1953.

/s/ PANCHO BARNES,

/s/ E. S. McKENDRY,

WILLIAM EMMERT BARNES,

Defendants in Propria Persona [78]

MOTION TO DISMISS

Come now the defendants, Pancho Barnes, E. S. McKendry, and William Emmert Barnes, and move this Honorable Court that the Complaint on file herein be dismissed for the following reasons:

1. Improper and illegal initiation of the Condemnation Suit.

2. The Statutes are not explicit and lack express legislative power as to the defendants' lands.

3. The Petition is instituted in bad faith and with spiteful and malicious intent and the acquiring agency acted arbitrarily, capiciously, not in compliance with the Statutes and with fraudulent intent, abuse of discretion, and the defendants are informed and believe that there has been misappropriation of the appropriation for Muroc Air Force Base as set forth in Public Law 564, approved June 17, 1950.

This Motion will be based upon the pleadings on file in the within action and upon the Memorandum of Points and Authorities and on such documents,

affidavits, witnesses and arguments as [79] offered in support of the motion.

/s/ PANCHO BARNES,

/s/ E. S. McKENDRY,

/s/ WILLIAM EMMERT BARNES,

Defendants in Propria Persona [80]

[Endorsed]: Filed Sept. 5, 1953.

[Title of District Court and Cause.]

ORDER DENYING TEMPORARY INJUNCTION

The above entitled cause came on regularly to be heard in the above entitled court, United States Post Office and Court House, at Fresno, California, the Honorable Leon R. Yankwich, Judge presiding, on February 5, 1954, on an order to show cause, issued on application of the plaintiff, returnable on that date, why a temporary injunction should not issue restraining the defendants, E. S. McKendry, Florence Lowe Barnes, also known as Florence Lowe Barnes McKendry, also known as Pancho Barnes, from constructing or continuing with the construction of any buildings, structures, or improvements of any kind or character on the property hereinafter described. Plaintiff appeared by Laughlin E. Waters, United States Attorney, by August Weymann, Assistant United States Attorney, in support of the motion for a temporary in-

junction; the defendants E. S. McKendry and Florence Lowe Barnes appeared in propria persona in opposition to said motion.

Oral testimony and documentary evidence were received by the court and the matter argued; and the court being fully advised in the premises, finds:

1. That a defeasible title to the lands and premises hereinafter described became vested in the plaintiff, United States of America, on February 27, 1953, by the filing of plaintiff's declaration of taking and the deposit of the estimated just compensation into the register of the court for the use of the parties entitled thereto; that subsequent to the filing of said declaration of taking, defendants and respondents, Florence Lowe Barnes, also known as Florence Lowe Barnes McKendry, and as Pancho Barnes, and E. S. McKendry and William Emmert Barnes, filed in this proceeding a motion to set aside such declaration of taking and vacate and set aside the ex parte judgment upon the declaration of taking and a motion to dismiss this action, which motions are still pending before this court before the Honorable Campbell E. Beaumont, one of the judges thereof. That by reason thereof, the issue as to the title is contested as between the plaintiff and the above-named defendants and respondents and is still undecided by this court. That further proceedings upon such motions are set for February 23 and 24, 1954.

2. That the defendants and respondents Pancho Barnes, E. S. McKendry, and William Emmert

Barnes, were in the exclusive possession of the lands and premises hereinafter described and were lawfully entitled to be in the exclusive possession thereof on February 2, 1954, and at all times thereafter up to this date.

3. That prior to the filing of this suit and the filing of the declaration of taking referred to in Finding 1 and prior to the filing of this action, the improvement in structure which is the subject matter of the order to show cause why a temporary restraining order should not issue and a preliminary injunction should not issue in this proceeding, had already been erected and constructed upon the premises hereinafter described to the following extent: That the cement foundation had been laid and was in place, that the walls had been erected and were in place, that the [94] pillars and crossbeams had been erected and were in place and the structure was covered with a sunshade or drape, and such structure had been and was being used by the defendants and respondents.

3. That without the consent and against the will of the United States of America the said defendants have made changes in the physical characteristics of said property by constructing certain improvements thereon and they will continue with such construction unless enjoined by this court from proceeding with said construction; that such improvements were made while said defendants and respondents were lawfully in possession of said premises and lawfully using the same, and for the purpose of protecting said improvements by plac-

ing thereon a plastic-coated impervious roof, and by proposing to construct and erect thereon window frames and doors so as to enclose the same; that the order to show cause in this case was issued and served after the doors and windows had been obtained and brought to the premises, but before they were actually placed in and attached to the building; that the roof construction had been completed prior thereto;

4. That defendants and respondents Pancho Barnes and E. S. McKendry offered and stipulated in open court as follows:

“I would like to make a stipulation in writing, if it would satisfy Mr. Weymann and the Air Force, that we will construct nothing that will in any way be of any cost to them to demolish or tear down anything that we may put up, such as a sunshade, or that we will remove it at our own expense.”

5. That plaintiff will suffer no injury, loss or damage by the continuance of the acts of the defendants in constructing the improvements aforesaid; that if any monetary damage should accrue as a result of such construction of improvements upon said premises, plaintiff has a plain, adequate and complete remedy at law by offsetting the amount thereof as against compensation to be paid to [95] said defendants and respondents or by recovery of a money judgment from them for the amount thereof.

6. That on February 2, 1954, the date of the issuance of the order to show cause herein, there was pending before this court before the Honorable

Campbell E. Beaumont, one of the judges thereof, a motion by the plaintiff under Title 40, Sec. 258(a), USC, for an order of possession of the premises hereinafter described, which motion was being contested by defendants and respondents, Pancho Barnes, E. S. McKendry and William Emmert Barnes, and was and still is at issue and upon which a hearing had been set before Judge Beaumont to commence February 23, 1954.

7. That it is not true that the land and premises hereinafter described lie within the construction of the new test runway presently under construction for the Air Force Flight Test Center at Edwards Air Force Base, California; that, to the contrary, said land and premises are not less than three miles from the exterior limits of said runway. That no evidence was received of any plans on the part of plaintiff to bring such runway any closer to such land and premises.

8. That by reason of the facts found as aforesaid, the court is of the opinion and concludes and decides that plaintiff is not entitled to a temporary injunction as prayed for.

9. That the lands and premises hereinabove referred to are known as $W\frac{1}{2}$ of $NW\frac{1}{4}$; $NE\frac{1}{4}$ of $NW\frac{1}{4}$; $W\frac{1}{2}$ of $SE\frac{1}{4}$ of $NW\frac{1}{4}$; $W\frac{1}{2}$ of $NE\frac{1}{4}$; $E\frac{1}{2}$ of $SE\frac{1}{4}$ of $NW\frac{1}{4}$; $NW\frac{1}{4}$ of $SW\frac{1}{4}$; $E\frac{1}{2}$ of $NE\frac{1}{4}$, all in Section 20, Township 9 North, Range 10 West, S.B.B. & M., according to the official plat of the survey of said land on file in the Bureau of Land Management.

Wherefore, it is ordered and adjudged that the application of the United States of America for a temporary injunction enjoining and restraining Florence Lowe Barnes, also known as Florence Lowe Barnes McKendry, also known as Pancho Barnes; E. S. [96] McKendry, and William Emmert Barnes, and each of them, their attorneys, agents, servants, employees, and all persons acting by, through, or under them, or any of them, or by or through their order, from constructing or continuing with the construction of any building, structure or improvement of any kind or character on any part of the real property described in Finding 9, be and it is hereby denied.

Dated: February....., 1954.

United States District Judge.

Presented by:

/s/ PANCHO BARNES,

/s/ E. S. McKENDRY,

Defendants and Respondents
in Propria Persona. [97]

Points and Authorities

Summary of the facts adduced at the hearing

Order to show cause upon one day's notice issued and directed to Pancho Barnes and E. S. McKendry only, requiring them to appear in Fresno before the Honorable Leon R. Yankwich, then and there to show cause why temporary injunction should not be issued restraining and enjoining them

from constructing or continuing with the construction of any building, structure or improvement of any kind or character upon the lands which are the subject matter of this action. At the outset the Court stated that he had full knowledge of and was considering as a part of this proceeding the pending proceedings before Judge Beaumont which consisted of the following:

1. Motion to dismiss the complaint by the respondents to this motion;

2. A motion to vacate and set aside the declaration of taking and the ex parte decree on declaration of taking made by these respondents; and

3. Motion by the United States to obtain an order of possession of the premises which are the subject matter of these proceedings.

All of said motions have been entertained by Judge Beaumont and were presently pending before him, all were contested and at issue and all were undecided and the issues presented by each and all of them were scheduled for further hearing and oral arguments commencing on February 23, 1954.

The construction complained of by the United States had for the most part been made and done before the action was filed and the declaration of taking was filed. Additional placement of an impervious roof, procuring of doors and windows with the intention [98] of placing them, had progressed to the extent that the doors and windows had been procured and were on the premises, but had not been actually attached to the building.

The Government's title is a defeasible one which was under contest actually in issue at the date of the issuance of this order to show cause and at the date of the hearing thereon.

The operation of Sections 3 and 5 of the Declaration of Taking Act, 40 USC, Section 258 (a), is to cut off the Government's right to abandon the proceedings. It is not to compel the owners to submit to unauthorized takings. Accordingly, in our opinion, the right of the owner to challenge the validity of the taking in nonconformity with the prescribed statutory provisions was not destroyed by such act. *Catlin vs. U.S.* 324 US 229, at page 243.

2. Until this court had disposed of the Government's motion to obtain possession, the legal possession was and is vested in the defendants and respondents. "Upon the filing of declaration of taking, the court shall have power to fix the time in which and the terms upon which the parties in possession shall be required to surrender possession to the petitioner." Title 40, Sec. 258(a), USC, last paragraph.

3. One in lawful possession of premises which are being condemned has the right to make improvements thereon during such lawful possession, subject only to the limitation that he may not claim and collect compensation for such additions or improvements as he makes. *Naval Government of Guam vs. Certain Meters of Land* 102 Fed. Sup., 427, 430, Section 1249, CCP.

4. A temporary injunction will not be granted

if the applicant has a plain, adequate and complete remedy at law. Title 28, Section 284, USC.

5. Here the plaintiff has a plain, adequate and complete remedy at law:

(a) By right of offset. U.S. vs. Miller, 317 US 369 at page 382; [99]

(b) Through the fact that it does not have to pay for improvements made after the condemnation proceedings are filed.

“Generally speaking, a landowner is not entitled to compensation for improvements placed on land after it is appropriated to a public use.” 29 CJS Title “Eminent Domain,” Paragraph 175(2), page 1048. Section 1249 CCP, Subdivision (c).

Defendants and respondents have estopped themselves by their stipulation to claiming any compensation for these improvements.

6. “A court of equity is sedulous to prevent the successful invocation of its interlocutory injunction to perform the function of a successful action of ejectment and at the same time to avoid the trial of title indispensable to such an action.” *Folk vs. U.S.*, 233 Federal Reporter 177 at page 183.

Comment: Here the factual situation is that at the time of the issuance of this order to show cause and at the time of the hearing thereon, there was pending before Judge Beaumont contested issue as to the Government’s title to the premises and as to the right of possession to the premises. The necessary intent of this application was to circumvent the result of such issues before Judge Beaumont to

have them determined in this ancillary proceeding upon one day's notice.

7. "It is familiar law that injunction will not issue to enforce a right that is doubtful or to restrain an act, the injurious consequences of which are merely trifling. If the evidence be conflicting and the injury doubtful, this extraordinary remedy of injunction properly may be withheld when it is applied for before the asserted right has been established at law." *Burroughs vs. City of Dallas*, 276 Fed. Rep., 812 at page 814. [100]

8. The extraordinary remedy of injunction is not warranted where, as here, there is an adequate remedy at law. (*Mathes, J.*) *United States vs. Petersen*, 91 Fed. Sup. 209, 213. [101]

Affidavit of Service by Mail

State of California,
County of Los Angeles—ss.

Guilford L. White being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within above entitled action; that affiant's business address is 408 S. Spring, Los Angeles, Calif., that on the 13th day of February, 1954, affiant served the within Order Denying Temporary Injunction on the Plaintiffs in said action, by placing a true copy thereof in an envelope addressed to the attorney of record for said Plaintiffs at the office address of said attorney, as follows "August

Weymann, Assistant United States Attorney, 807 Federal Building, Los Angeles 12, California''; and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in a mailbox, sub-post office, substation, or mail chute (or other like facility) regularly maintained by the Government of the United States in the United States Post Office in the City of Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by the United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

/s/ GUILFORD L. WHITE

Subscribed and sworn to before me this 13th day of February, 1954.

[Seal] /s/ RICHARD C. MARSH,
Notary Public in and for the County of Los Angeles, State of California. [102]

[Endorsed]: Lodged February 13, 1954.

[Endorsed]: Considered and Denied February 15, 1954.

In the United States District Court, Southern
District of California, Northern Division

No. 1253-ND Civil

UNITED STATES OF AMERICA, Plaintiff,

vs.

360 ACRES OF LAND in the County of Kern,
State of California; E. S. McKENDRY, et al.,
Defendants.

TEMPORARY INJUNCTION

The above entitled cause came on regularly to be heard in the above entitled court, United States Post Office and Court House, at Fresno, California, the Honorable Leon R. Yankwich, Judge presiding, on February 5, 1954, on an order to show cause, issued on application of the plaintiff, returnable on that date, why a temporary injunction should not issue restraining the defendants, E. S. McKendry, Florence Lowe Barnes, also known as Florence Lowe Barns McKendry, also known as Pancho Barnes, and William Emmert Barnes, from constructing or continuing with the construction of any buildings, structures, or improvements of any kind or character on the property hereinafter described. Plaintiff appeared by Laughlin E. Waters, United States Attorney, by August Weymann, Assistant United States Attorney, in support of the motion for a temporary injunction; the defendant, E. S. McKendry and Florence Lowe Barnes appeared in propria persona in opposition to said motion; de-

defendant William Emmert Barnes failed to appear.

Oral testimony and documentary evidence were received by the court and the matter argued; and the court being fully advised in the premises, finds:

1. That title to the land and premises hereinafter described became vested in the plaintiff, United States of America, on February 27, 1953, by the filing of plaintiff's declaration of taking and the deposit of the estimated just compensation into the registry of the court for the use of the parties entitled thereto; that ever since said February 27, 1953, United States of America was and now is the owner of said property by virtue of the filing of the declaration of taking as aforesaid;

2. That notwithstanding the ownership of said property by the United States of America as aforesaid, the above named defendants continued to occupy said premises to the exclusion of the United States of America;

3. That without the consent and against the will of the United States of America the said defendants have made changes in the physical characteristics of said property by constructing certain improvements thereon and they will continue with such construction unless enjoined by this court from proceeding with said construction;

4. That plaintiff will suffer irreparable injury, loss, and damage by the continuance of the said acts of the defendants as aforesaid, in that plaintiff will be put to additional expense for the removal of said

construction upon securing possession of said premises, and that the appraisal of the value of the structures and improvements for which the said defendants may be entitled to compensation in plaintiff's condemnation proceeding will be made more difficult and uncertain;

5. That by reason of the facts found as aforesaid the court is of the opinion and decides that plaintiff is entitled to a temporary injunction as prayed for;

Wherefore, it is ordered and adjudged that the defendants, Florence Lowe Barnes, also known as Florence Lowe Barnes McKendry, also known as Pancho Barnes, E. S. McKendry, and William Emmert Barnes, and their respective attorneys, agents, servants, employees, and all persons acting by, through, or under them, or either of them, or by or through their order, be and they hereby are enjoined [104] until the further order of the court from erecting or causing to be erected or continuing to erect any building, structure, or improvement of any description upon any portion of the premises described in plaintiff's complaint and its declaration of taking on file herein. Said premises are known and described as all of Section 20, Township 9 North, Range 10 West, San Bernardino Meridian, in the County of Kern, State of California.

Dated: February 15, 1954.

/s/ LEON R. YANKWICH,

United States District Judge.

Presented by:

LAUGHLIN E. WATERS,
United States Attorney

AUGUST WEYMANN,
Assistant United States Attorney

/s/ By A. WEYMANN,
Attorneys for Plaintiff. [105]

Affidavit of Service by Mail attached. [106]

[Endorsed]: Judgment Filed and Entered Feb.
15, 1954.

[Title of District Court and Cause.]

MEMORANDUM OF OPINION AND ORDERS

The government deposited with the Clerk of the Court the sum of \$205,000 as estimated compensation for the taking of the property in question, which is situated in the vicinity of Edwards Air Base in Kern County, California. After the deposit was made these defendants requested, and were granted, the withdrawal of \$194,000. It is clear that the acceptance of such amount constitutes a waiver of objections to the taking.

Defendants' motion to dismiss the action is denied.

Defendants' motion to set aside the declaration of taking is denied.

The government's motion for possession is granted upon the terms hereinafter set forth.

The chief problem of the court is to fix a time at which the government shall take possession of the premises. The government contends that it is faced with a dangerous situation in that the property is in the zone of accidents from high-speed planes which are in training there. The defendants have claimed that there is very little likelihood of such immediate danger; that it would be unfair to dispossess them of the property as the situation now exists and is likely to be for an extended time in [107] the future.

On October 28, 1953, at page 184 of the transcript beginning at line 23, Colonel Akers, Chief of Staff, was a witness on re-direct examination. The following there appears:

“The Court: And where is the work being done now, on this map?

The Witness: You mean the construction work?

The Court: Yes, whatever work is being done for the purpose of completing this runway and this system that you have in mind. Where is the work being done now?

The Witness: The construction work in general is being done in this area (indicating) on the runway. Around up here on the taxi-way ramp area; and the building area, roads and so forth, up here (indicating), there is construction work.

The Court: And how far would that be from Miss Barnes' property?

The Witness: Offhand, I would estimate it would be in the neighborhood of three miles, statute.

The Court: Now, is there any degree of reasonable likelihood that with the work being done here

(indicating), three miles away from her property, that her property or anyone there would be injured?

The Witness: Yes, sir. The likelihood exists, because the aircraft are flying over this area every day." * * * * *

"The Witness: I am not sure, your Honor, but let me answer it this way: The work with respect to constructing the runway itself, that is, the [108] building of runways or buildings, that is not the work that endangers her property or anyone else's property.

The Court: That is what I want to know.

The Witness: It is the flying of aircraft, the testing of aircraft.

The Court: What I want to find out is the necessity for the immediate possession of the property; and I am trying to determine whether there is any likelihood that there will be injury resulting if it isn't ordered now, or whether it should be ordered at a later time.

The Witness: That is a difficult question to answer your Honor. I think we went into something like that before. Naturally, we do not want accidents to happen, but our mission, our job, is to test these new airplanes and find out what is wrong with them. In the course of testing, the accidents do occur, may occur at any time in flight, take-off or landing. It may be over the property or somewhere else. There is that danger of accidents happening at any time, on the property or anywhere else.

The Court: Let me say that I am now referring

to Exhibit No. 4 and Enclosure No. 3. Here is the runway, in a northeasterly direction, from B to A.

The Witness: That is the runway being built.

The Court: Being built?

The Witness: That is not the runway in use at the present time.

The Court: Where is the one in use?

The Witness: This one right here (indicating), [109] your Honor, indicated by the dark line.

The Court: This one from B to A is the one being built for future use?

The Witness: That is correct, sir.

The Court: Has there been any work done on that runway yet?

The Witness: Yes, sir. The work on that runway is, I would say, approximately 20 to 25 per cent completed.

The Court: What is the distance between the yellow of Miss Barnes' property and the southwesterly place marked 'B' of the runway which is being now worked on?

The Witness: I would judge it to be in the neighborhood of two or three miles, your Honor.

The Court: When do you expect to do work from 'B' to Miss Barnes' property?

The Witness: Would you mind saying—

The Court: I will ask you what kind of work do you expect to do there?

The Witness: The only work with respect to construction will be the removal of obstructions to flight.

The Court: There will be no runway?

The Witness: That is correct. It is not planned to build a runway across there. In the two-mile clear zone, obstructions to flight will be removed so aircraft can land, if necessary, wheels up, doing a minimum amount of damage; in other words, so they don't run into a telephone pole, ditch or something like that.

The Court: You expect to have jet planes flying there? [110]

The Witness: Yes, sir; not only jet planes, but other flights."

It will be borne in mind that the defendants' property lies southwesterly from the Edwards Air Base, and the ground rules there provide that a take-off of airplanes must be in a northeasterly direction.

There is testimony in the record that the government will not complete the proposed work until December, 1954.

It is my view that the government should have an order of possession.

It is ordered that the defendants shall be required to surrender possession of the premises to the plaintiff at 12:00 o'clock noon May 22, 1954.

In the meantime, and until said surrender of possession, it is ordered that the defendants shall not impede or interfere with or harass the agents of the government who go on the premises for the purpose of preparing for the trial of this proceeding; that such agents shall not enter upon said property for any other purpose; that while on said premises for such purpose they shall not harass

said defendants, or any of them, or defendants' servants or agents, and shall not interfere with the defendants' possession or rights in any way, and that they shall restore to its original place any property necessary to be moved in making their investigation.

In the court's opinion the above order of possession is fair and reasonable.

Dated: March 19, 1954.

/s/ C. E. BEAUMONT,
Judge. [111]

[Endorsed]: Filed March 22, 1954.

[Endorsed]: Judgment Docketed and Entered March 23, 1954.

[Title of District Court and Cause.]

SUPPLEMENTAL AMENDMENT TO MOTION
TO SET ASIDE DECLARATION OF TAK-
ING AND TO VACATE AND SET ASIDE
EX PARTE JUDGMENT

Come Now the defendants, Pancho Barnes, E. S. McKendry and William Emmert Barnes, and by way of amendment to their Motion to Set Aside Declaration of Taking and to Vacate and Set Aside Ex Parte Judgment heretofore served and filed in these proceedings, move this Honorable Court that the Declaration of Taking on file herein be set aside and that the ex parte judgment on file herein be vacated and that other orders and decrees in said proceedings subsequent to the filing of said Declar-

ation of Taking be vacated and set aside for the following reasons:

1. That these proceedings are in violation of the United States Constitution and particularly the Fifth and Fourteenth Amendments thereof.

2. That the United States has not been authorized by any Act of Congress to acquire the lands of these moving defendants through these condemnation proceedings.

3. That this proceeding was commenced and has been prosecuted in bad faith and with express malice toward these defendants and each of them [112] and particularly toward defendant Pancho Barnes, and that such express maliciousness was held by the Secretary of the Air Force, the Assistant Secretary of the Air Force and the acquiring agency of the land taken under the declaration of taking and the decree rendered thereon.

That Bernard Evans, acting in bad faith and actual malice, did make the only appraisal of the defendants' property and did not use that degree of skill necessarily required by one of his profession and acting in his capacity. He refused to take time to look at much of the ranch and the many installations thereon. He was slipshod and hurried in his methods. He consumed approximately 11 hours total time in appraisal work on the premises. (One appraiser of the defendants required 13 days on the property to cover its assets). There was malevolent intent on the part of Bernard Evans in his recommendation to the acquiring authorities and thus to the Secretary of the Air Force. The

Assistant Secretary of the Air Force, one Edwin V. Huggins did on the 3rd day of February, 1953, sign a Declaration of Taking with a Schedule "A" attached thereto, which included the sum set as estimated just compensation at \$205,000. The Declaration of Taking filed on February 27, 1953, was followed by a Decree on Declaration signed by Judge Yankwich which was stamped "Judgment docketed and entered March 2, 1953". Subsequently a "temporary injunction" against the defendants was signed by Judge Yankwich which constitutes a further "taking". The information put before Judge Yankwich by way of affidavits and testimony was made in bad faith and with intense malevolent intent by Colonel Akers and Colonel Sacks and other Air Force personnel not for the reason as stated but to hamper and interfere with the defendants' business and in furtherance of other actions to hamper and interfere with the defendants' business.

The Fifth Amendment to the Constitution of the United States states "Nor shall private property be taken for public use without just compensation". There is a strong prima facie case that the amendment has been abused and nullified in this case of United States vs. 360 Acres of Land and a showing of deliberate bad faith in the appraisal and/or recommendation in so much as the United States Government did pay the sum of \$593,500.00 [113] for 240 acres of undeveloped desert land as shown in the deed made to them by Macco Corporation recorded May 12, 1953, at the Kern County Re-

corder's Office (Pancho Barnes' Exhibit No. 10 for identification). This land is adjacent to and approximately $\frac{3}{4}$ of a mile from the defendants' property but badly located and not even on a road. This property is absolutely unimproved vacant desert land and without water. The defendants' 360 acres of land is highly improved, located on a main highway, has 5 wells (one of which is sufficient to the needs of the property), approximately 40,000 square feet (at the time of condemnation) of buildings. (Reasonable replacement for buildings alone value about \$400,000.00.) Approximately 100 acres under irrigation, highly improved airport, stock corrals, fences and cross fences. One of the finest rodeo grounds in the United States and two race tracks, landscaping, etc. The \$205,000 estimated as "just compensation" is not sufficient money to allow the defendants to remove themselves from the premises let alone of re-establishing themselves to permit a reentering of their same business.

The defendants have been subjected to the most virulent discrimination by the United States Government when it willingly negotiates a settlement of \$593,500.00 with Macco Corporation for 240 acres vacant desert land adjacent to the defendants' property and condemns defendants' land of 360 acres of highly developed and productive land for only \$205,000.

In his signing of the Declaration of Taking the Assistant Secretary of the Air Force relied and acted on the fraudulent, malevolent, unjust and incorrect recommendation of his agents. The de-

fendants have information and belief that the present Secretary of the Air Force, Harold Talbot, has full knowledge of the proceedings of this case and that by his acquiescence in the matter consciously and deliberately perpetuates the bad faith, malevolence and arbitrary actions upon which this entire case is predicated.

The defendants requested a salvage value on their property, as is customary in other land acquisitions in the vicinity. Colonel Shuler of the United States Corps of Engineers told the defendants that the appraisal of their property was not sufficiently complete to be able to give them a [114] salvage value. The defendants have a letter dated 3 September, 1953 from Colonel Frye presently District Engineer stating that "the appraisal made on your property did not contain a salvage value on the improvements, and no salvage value has been arrived at since. Therefore, at this time, as in the original offer, this office can give you no salvage figure."

A subpoena duces tecum was served upon J. L. Maritzen to produce in court on October 27, 1953, the appraisal made by the appraiser, Mr. Bernard Evans, who was employed by the United States Corps of Engineers to appraise defendants' property. The appraisal is available to Mr. Maritzen. A Motion to Quash by the plaintiff is still before the Court. In a recent decision by Judge William Mathes it was held that "government confidential files are not necessarily privileged", that a defendant in a condemnation proceeding was entitled to

see the appraisal. As the government has refused to proffer the appraisal data the following holds true: Cal. C.C.P. 1963 Sub-section 5. "Evidence wilfully suppressed would be adverse if produced."

That in furtherance of such bad faith and actual malice, as aforesaid, the parties heretofore named and described and the acquiring agency acted and have continued to act arbitrarily and capriciously with express intention of and in the exercise of abusive discretion and contrary to the law and statutes in force and effect.

4. That plaintiff by these proceedings has not intended and does not intend in good faith to acquire the use of the lands belonging to these defendants for any lawful purpose of the United States but, to the contrary, are using these proceedings as a method of evicting these defendants and preventing them from carrying on in said premises.

Said motion will be based upon the pleadings on file, the evidence heretofore introduced to the court in support of the original motion to Set Aside Declaration of Taking and to Vacate and Set Aside Ex Parte Judgment, the memorandum of points and authorities heretofore submitted, and oral argument to be made in behalf of the defendants pursuant to the order of this court. [115]

/s/ PANCHO BARNES

/s/ E. S. McKENDRY

/s/ WILLIAM EMMERT BARNES

[Endorsed]: Filed February 23, 1954.

[Title of District Court and Cause.]

SUPPLEMENTAL AMENDMENT TO
MOTION TO DISMISS

Come Now the defendants, Pancho Barnes, E. S. McKendry and William Emmert Barnes, and by way of amendment to their Motion to Dismiss heretofore served and filed in these proceedings, move this Honorable Court that the complaint on file herein be dismissed and that all other orders and decrees in said proceedings subsequent to the filing of said complaint be vacated and set aside for the following reasons:

1. That these proceedings are in violation of the United States Constitution and particularly the Fifth and Fourteenth Amendments thereof.

2. That the United States has not been authorized by any Act of Congress to acquire the lands of these moving defendants through these condemnation proceedings.

3. That this proceeding was commenced and has been prosecuted in bad faith and with express malice toward these defendants and each of them and particularly toward defendant Pancho Barnes, and that such express maliciousness was held by the Secretary of the Air Force, the Assistant Secretary of the Air Force and others whose misrepresentations previous [122] to the filing of condemnation were relied upon and adopted by the Secretary of the Air Force and the Assistant Secretary of the Air Force. Colonel Maxwell and Colonel Gilkey.

both acted in bad faith and with malicious intent to harm defendant Pancho Barnes and so informed her of their intentions. Their actions and recommendations resulted in the Secretary of the Air Force and the Assistant Secretary of the Air Force acting according to their recommendations. Colonel Gilkey informed the defendants Pancho Barnes and E. S. McKendry that he had changed the entire plans of the air base with the sole purpose of getting rid of them, which statement was so borne out by the changing of the master plan and by subsequent action that it is logical to assume that the Secretary and the Assistant Secretary of the Air Force acted upon his recommendation which recommendation was made in bad faith. The making of biased and malevolent recommendations through channels to the Secretary of the Air Force was done in an attempt to harm the defendants as distinguished from serving the government and the taxpayers of the country.

That in furtherance of such bad faith and actual malice, as aforesaid, the parties heretofore named and described and the acquiring agency acted and have continued to act arbitrarily and capriciously with express intention of and in the exercise of abusive discretion and contrary to the law and statutes in force and effect.

4. That plaintiff by these proceedings has not intended and does not intend in good faith to acquire the use of the lands belonging to these defendants for any lawful purpose of the United States but, to the contrary, are using these pro-

ceedings as a method of evicting these defendants and preventing them from carrying on and occupying lawful businesses which they are carrying on in said premises.

Said motion will be based upon the pleadings on file, the evidence heretofore introduced to the court in support of the original motion to dismiss, the memorandum of points and authorities heretofore submitted, and oral argument to be made in behalf of the defendants pursuant to the order of this court. [123]

/s/ PANCHO BARNES

/s/ E. S. McKENDRY

/s/ WILLIAM EMMERT BARNES

Defendants in Propria Persona. [124]

[Endorsed]: Filed February 23, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that E. S. McKendry and Pancho Barnes (also known as Florence Lowe Barnes and as Florence Lowe Barnes McKendry), defendants above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Order and Decree entitled "Temporary Injunction" made and entered in this cause on the 15th day of February, 1954, by the Honorable Leon R. Yankwich, Chief Judge, and enjoining

these appellants and each of them until the further order of said court from erecting or causing to be erected or continuing to erect any building, structure or improvement of any description upon any portion of the premises described in plaintiff's complaint in this cause.

/s/ PANCHO BARNES,

/s/ E. S. McKENDRY,

Appellants in propria persona.

Box 37, Muroc, California. [126]

[Endorsed]: Filed March 17, 1954.

[Title of District Court and Cause.]

UNDERTAKING FOR COSTS ON APPEAL

Whereas, E. S. McKendry and Pancho Barnes, defendants in the above entitled action are about to appeal to the Circuit Court of Appeals for the Ninth Circuit from judgment of temporary injunction entered in said action on February 15, 1954, in the District Court of the United States, for the Southern District of California, Northern Division.

Now Therefore, in consideration of the premises and of such appeal the undersigned, National Automobile and Casualty Insurance Company a corporation organized and existing under and by virtue of the laws of the State of California, as Surety, does hereby undertake and promise on the part of the Appellants that said Appellants will

pay all costs if the appeal is dismissed or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified, not exceeding Two Hundred Fifty and No/100 (\$250.00) Dollars, to which amount it acknowledges itself bound.

In Witness Whereof, the said National Automobile and Casualty Insurance Company has caused this obligation to be signed by its duly authorized Attorney-in-Fact at Los Angeles, California, and its corporate seal to be hereto affixed, this 18th day of March, 1954.

[Seal] National Automobile and Casualty
 Insurance Company,

/s/ By William E. Fortney, Attorney-in-Fact

The Premium charged for this Bond is \$10.00 for its term.

Affidavit of Verification attached.

Examined and recommended for approval as per Rule 8. Signed Pancho Barnes, E. S. McKendry, in Propria Persona.

I hereby approve the foregoing bond. Dated the 18th day of March, 1954.

/s/ Leon R. Yankwich,
 Judge

[127]

[Endorsed]: Filed March 18, 1954.

[Title of District Court and Cause.]

DESIGNATION OF THE RECORD

Come now the appellants and pursuant to Rule 75 (a) R. C. P., designate the following as the contents of the record on appeal.

1. Complaint in Condemnation.
2. Declaration of Taking.
3. Decree on Declaration of Taking.
4. Motion to Dismiss.
5. Motion to Set Aside Declaration of Taking and to Vacate and Set Aside Ex Parte Judgment entered thereon.
6. Supplemental Amendment to Motion to Dismiss.
7. Supplemental Amendment to Motion to Set Aside Declaration of Taking and to Vacate and Set Aside Ex Parte Judgment.
8. Notice of Motion for an Order of Immediate Possession.
9. Defendant's Memorandum in Opposition to Plaintiff's Application for Order of Immediate Possession.
10. Order to Show Cause Why Temporary Restraining Order Should Not Issue.
11. Reporter's Transcript of Proceedings, Feb-

ruary 5, 1954 pages 1 through 79, Honorable Leon R. Yankwich, Judge Presiding. [128]

12. Temporary Injunction.

13. Defendant's proffered Order Denying Application for Temporary Injunction.

14. Notice of Appeal to Court of Appeals for the Ninth Circuit under Rule 73 (b) and Title 28 U. S. C. A. (Revised) Section 1292.

15. Undertaking for Costs on Appeal.

16. This Designation.

/s/ PANCHO BARNES,

/s/ E. S. McKENDRY,

Appellants in Propria Persona.

Acknowledgment of Service attached. [129]

[Endorsed]: Filed April 22, 1954.

[Title of District Court and Cause.]

MOTION FOR EXTENSION OF TIME TO
FILE RECORD AND DOCKET APPEAL
(Rule 73 (g) R.C.P.)

Whereas it appears that the time within which to file record and docket appeal in the above matter will expire on April 26, 1954 that there is insufficient time and a great distance between the offices of respective counsel preventing physical presentation within the jurisdictional time limits;

Now, Therefore, Defendants respectfully move that the time within which to file record and docket appeal be extended up to and including May 26, 1954.

Respectfully submitted,

/s/ PANCHO BARNES,

/s/ E. S. McKENDRY,

Appellants in Propria Persona.

It is so Ordered.

/s/ LEON R. YANKWICH,

Judge. [133]

[Endorsed]: Filed April 22, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 134, inclusive, contain the original Complaint in Condemnation; Declaration of Taking; Decree on Declaration of Taking; Separate Petitions of E. S. McKendry et al for Partial Distribution of Compensation Pursuant to Section 258a, Title 40, U.S.C. filed March 11, 1953 and March 13, 1953 and separate Orders for same; Receipt and Partial Satisfaction of E. S. McKendry, as Trustee; Receipt and Full Satisfaction of

Farmers and Merchants Bank of Long Beach; Separate Receipts of Bureau of Internal Revenue and State of California, Department of Employment; Notice of Motion for an Order of Immediate Possession; Notice of and Motion to Set Aside Declaration of Taking and to Vacate and Set Aside Ex Parte Judgment and Supplemental Amendment Thereto; Motion for Temporary Restraining Order; Order to Show Cause Why Temporary Restraining Order Should Not Issue; Defendants' Memorandum in Opposition to Plaintiff's Application for Order of Immediate Possession; Notice of and Motion to Dismiss; Proposed Form of Order Denying Temporary Injunction; Temporary Injunction; Memorandum of Opinion and Orders; Supplemental Amendment to Motion to Dismiss; Notice of Appeal; Undertaking for Costs on Appeal; Designation of Record on Appeal; Counter-designation of Record on Appeal; Motion for and Order Extending Time to Docket Appeal and Order Extending Time to File Counterdesignation of Record on Appeal and to Docket Appeal which, together with copy of Reporter's Transcript of Proceedings on February 5, 1954, in two volumes, transmitted herewith, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 3rd day of June, A.D. 1954.

[Seal]

EDMUND L. SMITH,
Clerk.

/s/ By THEODORE HOCKE,
Chief Deputy.

In the United States District Court, Southern District of California, Northern Division

No. 1253-ND—Civil

UNITED STATES OF AMERICA, Plaintiff,

vs.

360 ACRES OF LAND IN THE COUNTY OF KERN, State of California, E. S. McKENDRY, FLORENCE LOWE BARNES, etc., et al.,
Defendants.

TRANSCRIPT OF PROCEEDINGS

Fresno, California, February 5, 1954

Honorable Leon R. Yankwich, Judge presiding.

Appearances: For the Plaintiff: Laughlin E. Waters, Esq., United States Attorney, by August Weymann, Esq., Special Assistant, Lands Division. For the Defendants: Mrs. Pancho Barnes and E. S. McKendry, each appearing in propria persona. [1*]

Mrs. Barnes: Your Honor, I haven't quite fin-

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

ished reading this. I did not hear about this until last night. I would like a chance to complete reading it. I believe I know what is necessary, and I believe Mr. Weymann has some witnesses here with him.

Mr. Weymann: I will not need any witnesses, your Honor.

The Court: Just a moment. Let's understand what the problem is. The problem here is very simple, and if you desire time to complete reading the papers, I will give the time. I am calling the session because we have been waiting here since ten o'clock for the purpose of this hearing.

Under the law—and I am making these statements because you are appearing for yourself, otherwise I would not make the statements because you are supposed to know—under the law the Court has the power when application is made to issue a temporary restraining order without a hearing, upon a showing being made. An application was made to the Court to issue a restraining order to prevent you from engaging in construction on this ranch, the title to which has already passed to the Government of the United States by virtue of the declaration of taking and the only question is the determination of the amount you are to receive in compensation.

Because of the nature of the proceeding, and because [2] the courts at times do not desire to issue even temporary orders binding people to do or not to do certain things except after a hearing, I issued an order to show cause returnable this

morning, to be heard by Judge Beaumont or by me. I happen to be here as Chief Judge of the District.

The object of the hearing is merely to determine whether the Court shall issue an injunction, maintaining the condition in which the situation is now, and preventing the construction of any buildings that later on might have to be taken into consideration when the question of value is determined. That is the only question that is before the Court.

The affidavits on which Mr. Weymann based the motion are on file and are attached, and he has the option of presenting them, and if he desires additional testimony he may do so, but that is not necessary. And then you can present such facts or argument as you desire.

So we can start the proceeding and then if you desire additional time, this being the noon hour, we can continue the matter until a later hour in the day at which time the presentation will be completed. We have lost time because of unavoidable conditions, and the Court appreciates the fact that you have kept us informed of your whereabouts, and we have been sitting here waiting.

Now we can do one of two things: I can have Mr. Weymann amplify what I have said as to the nature of the proceeding, [3] make his offer of proof, and then we can continue the matter to a later hour, at which time additional facts may be presented and the rest of the day taken, if necessary, to dispose of the matter.

Mrs. Barnes: Your Honor, I say no affidavits

should be offered into evidence, because it does not give me the right of any cross examination.

The Court: It is permissible in this type of proceeding; affidavits may be offered. This is not a trial. This is merely a question of determining whether a condition exists.

Mrs. Barnes: I think that is a vital thing to determine, because I think the Air Force and Mr. Weymann and the United States Government have been using the course as a means of harassing us.

The Court: I am not interested in any such matter. I am familiar with the record; I know that there is pending before Judge Beaumont the motion for immediate possession, and that certain testimony has been taken. In fact, I looked through the transcript, and there are some depositions that have been returned. Judge Beaumont will determine that matter at the proper time, and I am not going to presume to pass upon any matter that is before him.

This morning the only matter that is before the Court is whether, pending the trial of this lawsuit and the [4] determination of the suit, the status quo should be maintained.

The matter of proof is up to the Court, and it is permissible in a hearing on these matters to allow affidavits to be received, and if it is desired to amplify them, then that can be argued later on.

One thing you must bear in mind, and I wrote an opinion last year to that effect in another case, there is only one issue in a condemnation suit which the person whose property is being taken has a

right to have determined, and that is the amount of compensation he or she is to receive. The question whether the property is necessary or whether other property is available is not a question to be considered.

Mrs. Barnes: I believe there has been a ruling on that, your Honor, to the higher court, in cases of bad faith there is a question.

The Court: That, however, is not a matter before the Court at the present. It is not a matter before me. Judge Beaumont has to decide that question.

I wrote an opinion because a couple of attorneys were questioning the right of the government to take property, which related to certain canals, it was needed for certain canals. I wrote an opinion in which I held whether the property is needed or not is not a question that can be disputed by the courts.

This is merely preliminary, but one thing is this, the [5] Court in any case of that kind has a right to entertain a motion such as this, the object of which is merely to maintain the status quo while the other matters are being determined, and that is the object of this motion.

Mrs. Barnes: Your Honor, I have not had a chance to read the papers, but in what I have read there are several misstatements, and I would like to cross examine the ones making the affidavits because they are not true.

The Court: No testimony has been received as yet. We will get to that at the proper time.

Mr. Weymann: The application is based upon the record before the Court, and upon the affidavits supporting the motion for a permanent restraining order.

The Court: All right. Let us identify the affidavits. Now, you have the affidavit of Lieutenant Colonel Marcus B. Sacks.

Mr. Weymann: Correct.

The Court: And you have the affidavit of Colonel Marion J. Akers.

Mr. Weymann: Correct.

The Court: And the affidavit of Lynn J. Butt-cane.

Mr. Weymann: That is correct.

The Court: And the affidavits of Irwin H. Smith, and Henry J. Yagel, and then your own affidavit.

Mr. Weymann: That is correct, your Honor. [6]

The Court: Of course, that was made for the temporary restraining order, your own affidavit.

All right, these affidavits which are attached to the petition will be received as part of the showing of the Government upon the hearing of this motion for temporary injunction as prayed for.

Mrs. Barnes: Do you mean when you receive them you believe them to be the truth? There is no question to determine whether or not those affidavits are truthful or not?

The Court: Just a moment. These affidavits are sworn to. When they are received they are presumed to be the truth. They may be contradicted by you by any counter-affidavits you may desire to

file, or by any testimony you may desire to present. All right.

Mr. Weymann: That is the basis for presenting them.

The Court: There is only one question——

Mrs. Barnes: Your Honor, pardon me. Colonel Akers and Colonel Sacks, who made affidavits, are in court. I see no reason why we could not call them as witnesses.

The Court: I will decide later on, if you desire to ask them questions I may decide later whether to allow it. This is not a trial. This is merely a motion and a number of things that are allowed in a trial are not allowed here. I am merely trying to get this started, and you may call them if they are available, call them as adverse witnesses [7] and examine them.

I am familiar with this record. We are very charitable and tolerant as to persons who appear in their own behalf, but I am not going to give you advice as to the law. You are presuming to defend yourself in court as an attorney and the fact you are not an attorney does not carry any prejudice, but I am not answering questions or giving instructions. As a Judge I do not instruct people as to what their rights are, because when a person chooses to be her own attorney she is presumed to know what the proceeding is.

Mrs. Barnes: O.K. Will Mr. Weymann stipulate at this time that these witnesses will appear then as adverse witnesses?

The Court: You have a right to call them. Let's go on. What additional evidence will you have?

Mr. Weymann: None whatever, your Honor.

The Court: Now I am going to continue this until 1:30. We have to double up because we only have one clerk; and my reporter was grounded, her airplane landed in Merced, so I am taking Judge Beaumont's reporter, and I am working everybody in between hours in the hope my reporter will get here. If not, why, the clerk can start us, and he can function in both courts. So we will continue the matter until 1:30.

That will give you an opportunity to examine further these papers and the order to show cause, and at that time [8] I will hear you. You can be sworn as a witness to contradict them, or have anyone else sworn, and if you desire to examine the persons who are here, you may do so under Section 43-b, you may examine them as to any matters contained in the affidavits.

There is only one matter that we will go into, and I want to warn you, we will go absolutely into nothing else. Whether your workmen are about to construct, or are engaged in construction work, that is the only issue before me at this time. I am not interested in any question you raise of good faith because that is not before me. It is a simple matter. If you say you are not, then an injunction cannot hurt you. All this injunction asks is that no construction work be done upon this property which the Government has condemned pending the deter-

mination of the lawsuit and the fixing of the amount you are to receive as compensation.

This is a very simple matter before me and I do not desire to have it complicated by other matters.

Mrs. Barnes: The things in the affidavits are before you, the wording in there.

The Court: The wording is——

Mrs. Barnes: What it says, the contention of their affidavits.

The Court: The contention, and the ground upon which it is asked, the injunction is asked, is merely that you are [9] constructing——

Mrs. Barnes: Your Honor,——

The Court: Just a moment. It is stated in this motion that you are still in possession of the property and that you are completing the erection of certain buildings and improvements. Now, the possession of the property, there is no question you are in possession because the Government has sought an order of possession. They did not take possession and that is still pending before Judge Beaumont. So the only question is whether you are doing any improvement which would afterwards affect the condition of the property. That is all that is before the Court, and the injunction is asked to maintain it in the condition as it is until Judge Beaumont and the jury ultimately decide what compensation shall be received.

That is the question to be decided later on, and the only question before the Court is the very limited question whether you are at the present time

engaged in making changes in the property that should not be allowed to be made, and that is all.

Mrs. Barnes: I am not making this difficult; the Government is making this difficult.

The Court: Just one moment. I have tried these lawsuits for 26 years; I have tried lawsuits of this character. I know how people feel about property. I got through trying one [10] two weeks ago. People have feelings about property. The Government of the United States, the State, county, city, the utility districts, all have the right to exercise eminent domain, and the only thing to be determined is the right of compensation. The fact you do not want the property taken does not make any difference.

I am merely trying to point out to you this is a very narrow hearing, on one issue only, and that is whether work is going on which should be stopped. If it is not going on, if they are mistaken as to what is going on, then you present it, and at the conclusion of the matter I will decide the matter and make findings. But whatever is decided has nothing to do with the suit before the court.

I have not opened the depositions, but the transcripts of the oral hearing are in the clerk's office, and I familiarized myself with them since coming here.

The other matters, of course, were presented to me in Los Angeles, as the Chief Judge of the Court, and I did not issue an injunction, as I have a right to do, a temporary restraining order for ten days. I am here; I am here because Judge Beaumont is

engaged. There are ten judges, and we can sit here, just as we sit in San Diego and in Los Angeles. In fact, I am coming up here on the 23rd to try some cases, and I will try a case here and Judge Beaumont will try another case in another court.

I am explaining this so you will understand this is one of the things that come up regularly.

We will continue this until 1:30, at which time I will hear you further.

(Whereupon, at 12:30 o'clock p.m., February 5, 1954, a recess was taken until 1:30 p.m. of the same day.) [12]

[Endorsed[: Filed February 13, 1954.

Friday, February 5, 1954, 1:30 p.m.

The Court: We will proceed with the further hearing in the Matter of United States against Barnes on the motion for the execution of a temporary injunction pending suit.

Mr. Weymann: The plaintiff has nothing further to offer, your Honor.

The Court: All right, Mrs. Barnes.

Mrs. Barnes: I would like to call Col. Sachs as an adverse witness.

The Court: All right. Col. Sachs, will you come forward and be sworn?

MARCUS B. SACHS

called as a witness by the defendants, under the provisions of Section 43(b) of the Federal Rules of Civil Procedure, having been first duly sworn, testified as follows:

Direct Examination

The Clerk: Will you state your full name, please?

The Witness: Marcus B. Sachs, Lieutenant Colonel.

Mrs. Barnes: Your Honor, I would like to refer to Col. Sachs' affidavit, which is in your file there.

The Court: All right.

Mrs. Barnes: If you would like to find it and follow me [14] with it.

The Court: That is all right. You go ahead.

Q. (By Mrs. Barnes): Col. Sachs, in your affidavit you refer to an Air Force photograph—they say it is an Air Force photograph—in which a certain building is shown marked "B". Do you recollect that? A. Yes.

The Court: Colonel, here is the original.

The Witness: Thank you.

Q. (By Mrs. Barnes): If you will observe lines 27 and 28 of your affidavit there. A. Yes.

Q. Will you read that?

A. "That the building identified and shown on said photograph marked 'B' did not exist at the time of said fire, nor at the time of the filing of the plaintiff's declaration of taking in this action. That as appears from the affidavit," et cetera.

(Testimony of Marcus B. Sachs.)

The Court: She merely meant for you to read it to yourself, because she wants to base a question on it.

Mrs. Barnes: I would just as soon have it in the record.

The Witness: I have read the portion.

Q. (By Mrs. Barnes): Now, you also said earlier in that affidavit that you were familiar with the property. Is that [15] correct?

A. Yes.

Q. Yet you state that this building did not exist until after the fire, the time of the fire; is that correct? A. Yes.

Q. In other words, you weren't very observant, were you, Colonel? A. I was.

Q. You were observant? A. I was.

Q. I would like to show you three photographs here that are exhibits in the case, in the motion to dismiss and the motion to set aside declaration of taking and in the motion of the Government for the order for immediate possession. These are official exhibits in that case.

Mr. Weymann: May I see them, please?

Mrs. Barnes: You have seen them, Mr. Weymann.

Mr. Weymann: I want to see them again, please.

(The photographs were exhibited to counsel.)

Mrs. Barnes: We are referring to the structures. Would his Honor like to see those?

The Court: That is all right. I can see them. Show them to the witness.

(Testimony of Marcus B. Sachs.)

Q. (By Mrs. Barnes): Now, in Exhibit B here, you show this building. Incidentally, this picture is very [16] unfamiliar looking to me. Do you have anyone here to authenticate this picture?

A. No.

Mrs. Barnes: I don't know, your Honor, if this will be permissible in the record. There is no one here to authenticate this picture.

The Court: The affidavit is sufficient identification, and if you want to ask anything further, you can ask the witness if this is a correct representation of what he saw, as stated in the affidavit.

The Witness: I may state I did not personally visit this place. I had been out there before, and I am testifying from having been there before, and from this photograph, and from what people told me who were out there.

Q. (By Mrs. Barnes): In other words, you are not familiar with the property?

A. I am familiar with the property. I have been there. You showed me around.

Q. Is this an official Air Force photograph?

A. Yes, it is.

Q. Who took this photograph?

A. I don't know what pilot by name, but one of our pilots took the aerial photograph of this building on the 29th of January, 1954.

Q. Now, I show you here a picture that is officially [17] in the record. There is a building, and do you see this woman standing here, and this portrays the paved floor, the roof and superstructure

(Testimony of Marcus B. Sachs.)

in here. Could you identify that as being that building? A. Of course it is not.

Q. What do you mean, it isn't?

A. Just what I said, it is not. All I see there are posts. I do not even see a roof. There is no roof there.

Q. Well, there are all the uprights for the roof?

A. There are some posts there. There is no roof.

Q. Do you know what the material is that covers this particular building?

A. I have been told.

The Court: Go ahead and state, so long as she has asked you the question.

The Witness: I have been told it is plastic.

Mrs. Barnes: I object to that myself. He evidently has not seen this.

The Court: You don't know, of your own knowledge, the material from which it was made?

The Witness: No, sir.

The Court: But you state that the picture which is attached to your affidavit shows structures which are not on the photograph shown to you by Mrs. Barnes?

The Witness: That is right, sir. [18]

Mrs. Barnes: That is all, Col. Sachs. Your witness, Mr. Weymann.

Do you wish to ask him anything?

Mr. Weymann: No questions.

The Court: Call your next witness. Oh, just one minute before you go away.

Now, what did you use as your picture?

(Testimony of Marcus B. Sachs.)

Mrs. Barnes: There are other pictures, and they will show the same structures here.

The Court: The main point is that we want to identify what you examined the witness concerning.

Mrs. Barnes: These are from the case.

The Court: But they are not in the record, so **they have to be identified?**

Mrs. Barnes: Yes, they are in the record, your Honor.

The Court: Where?

Mrs. Barnes: Mr. Eiland, would you explain?

The Clerk: Those are from the first hearing, not this hearing.

The Court: The main point is this: Can you spare these?

Mrs. Barnes: They are already of record.

The Court: But, as I told you, this is a separate hearing, and you have to do one of two things: either put this in as an exhibit of yours in this hearing, or identify it from [19] the other by number, or in some other manner, and do it by reference. It would be easier if you would let this be filed here.

Mrs. Barnes: I haven't got the power to take these, because they are already exhibits in the other case.

The Court: Could you take them out?

Mrs. Barnes: Mr. Eiland loaned them to me.

The Court: They have no number on them.

Mrs. Barnes: There is a big group of them, and they are all put in within one number.

(Testimony of Marcus B. Sachs.)

The Court: Do you remember it?

The Clerk: No, I do not remember the number. I would have to refer to my former record.

The Court: All right. Which of these pictures did you show him?

Mrs. Barnes: I showed that one to him there (indicating). I will explain it all to you, your Honor.

The Court: No, I don't want you to explain. I just want this identified.

Mrs. Barnes: These three all show the structures that this is looking out from.

The Court: All right. Let's mark these as Respondents' or Defendants' Exhibits A, B, and C on this motion, which are a part of whatever exhibit number it is in the other case, if you can identify it. If not, you can supply it for your [20] minutes later, Mr. Eiland.

The Clerk: Yes, I will.

The Court: I am merely trying to get them in without impinging on the other record. Then they are Exhibits A, B, and C in this matter.

(The documents referred to were marked Defendants' Exhibits A, B, and C, for identification.)

The Witness: Is that all, sir?

The Court: Yes. Step down.

(Witness excused.)

Mrs. Barnes: Col. Akers.

MARION J. AKERS

called as a witness by the defendants, under the provisions of Section 43(b) of the Federal Rules of Civil Procedure, having been first duly sworn, testified as follows:

Direct Examination

The Clerk: Will you state your full name, please?

The Witness: Marion J. Akers, A-k-e-r-s.

The Court: Mrs. Barnes, will you please observe the same rules that lawyers observe. We do not allow lawyers to come near a witness unless it is to show him a document. You will have to stay right there, because that is the rule, and when you want to show him a document, you can come up here.

All right, go ahead.

Mrs. Barnes: Thank you, your Honor.

Q. (By Mrs. Barnes): Col. Akers, there have been a great many references in these affidavits to the construction of a new runway. Do you recall those? A. No, I do not.

Mr. Weymann : Just a moment. I object to that as immaterial.

The Court: There is nothing about that in this affidavit. You are evidently referring to matters relating to the other motion, the motion for immediate possession. This does not set that forth, as far as I remember.

Mrs. Barnes: Well, Mr. Weymann made an affidavit there, your Honor, I believe.

(Testimony of Marion J. Akers.)

The Court: You cannot cross examine this witness as to that.

Mrs. Barnes: O. K. I would like, however, to ask Col. Akers:

Q. As Chief of Staff of the Air Base are you able to identify that photograph that was taken?

The Court: Show it to him. Here you are, Colonel.

(The photograph was handed to the witness.)

Q. (By Mrs. Barnes): This is the one right on top.

A. This is the photograph that you refer to?

The Court: The one that has the "B", the letter "B" in ink marked on the structure.

The Witness: I have the photograph here, yes.

The Court: The question is whether you can identify the structure that appears on that.

Q. (By Mrs. Barnes): The question was: Could he identify the photograph?

The Court: Oh, the photograph?

Mrs. Barnes: I want to authenticate the photograph, if possible.

The Court: Yes.

The Witness: I am not sure that I understand the question, your Honor. Identify the photograph?

The Court: Well, does that represent something that you yourself have seen?

The Witness: Yes, it does represent something that I have seen.

Mrs. Barnes: Your Honor, that wasn't the ques-

(Testimony of Marion J. Akers.)

tion. I want to try to identify the photograph. In other words, I want him to tell me who made it, when it was made, and what photograph that is.

The Court: That is not material. It is immaterial to the issues. Any person, given a photograph, whether it is of a person or a place, may testify as to whether that represents what was on the place.

Q. (By Mrs. Barnes): Col. Akers, is that an Air Force photograph?

A. I assume that it is. I have seen it before.

Q. You have seen it? A. Yes.

Q. Do you know who took it?

A. No, I do not know the photographer's name.

Mr. Weymann: Immaterial, your Honor.

Q. (By Mrs. Barnes): Was it taken under your orders?

A. It was not taken under my direct orders, no.

Q. When you say "direct orders," you mean you didn't tell the man that took it to take it, but did you tell the man that told the man on in the chain of command? Did you order that photograph taken? A. No, I did not.

Q. Do you know who did?

A. No, I don't know who ordered it taken.

Mr. Weymann: This is entirely immaterial, if the court please.

The Court: I will allow the question, if the witness who is present can identify it. As I said before, it does not matter who took the photograph. A person may use a photograph that is taken by

(Testimony of Marion J. Akers.)

another, and state that it, in his opinion, represents what was on that place.

Q. (By Mrs. Barnes): Have you seen this structure as [24] noted recently yourself?

A. You are referring to the portion marked "B"?

Q. Yes. A. I saw that, yes.

Q. When?

A. On last Friday, the 29th of January, 1954 I believe was the date.

Q. I believe you described that building in your affidavit. What was the material of the roof on that building?

A. To me it appeared to be this plastic covered screen material. Just what the trade name for it is, I don't know.

Q. I think you said in your affidavit there were other structures there. What other structures?

A. There were studdings, 2 by 6 studdings on the side. There were the 2 by 4—2 by 6 rafters forming a portion of the pitched roof.

Q. Did you measure those?

A. And other portions of plywood.

Q. Did you measure the portions of the plywood structure?

A. No, I did not measure them.

Q. Was that new structure or old structure?

A. The studding on the roof for the rafters?

Q. Yes, the beams.

A. Well, what portion? What roof do you refer to? [25]

(Testimony of Marion J. Akers.)

Q. Well, the part that holds up the roof, there are uprights, and then there is a roof. Was that old, or was that new?

A. Well, there was the rafters.

Q. Were some old and some new?

A. Some appeared to be old. Some appeared to be new.

Q. Did you notice the size of what appeared to be new? In other words, what I am trying to get at is, was that a large structure, or was there sufficient wood to hold up plastic lath?

A. I assume you are referring now to the roof structure, the rafters?

Q. Well, I am referring to the plastic glass on the roof, and what holds it up. You have mentioned something about 2 by 6's.

A. Studdings.

Q. Studdings. And I asked you if you measured them.

A. That I believe is a statement, not a question.

Q. I said, did you measure them.

A. No, I did not measure them.

Q. In other words, you are just making an estimate; is that right?

A. I have been around lumber long enough so I recognize a 2 by 6 when I see it.

Q. Col. Akers, were you present—— [26]

The Court: Just a moment. Let me ask you this: You say it looks like plastic glass. Is it what they call celloscreen, screen that is merely covered, or is it plastic glass, that is, that has more width? Or did it look like ordinary window glass?

(Testimony of Marion J. Akers.)

The Witness: Your Honor, my statement was—I said it appeared to be plastic covered screen.

The Court: Cello-screen?

The Witness: I don't know.

The Court: I know what that is, because I have worked with it.

The Witness: It may be. I don't know.

The Court: In other words, it was an ordinary screen over which there was plastic——

The Witness: Translucent material.

The Court: ——or over which translucent material is put on, and it keeps the rain out, but doesn't keep out the air?

The Witness: That is right.

The Court: All right. Then we are both talking about the same thing.

Q. (By Mrs. Barnes): Did you notice the floor in that building? A. Yes.

Q. Did that appear to be a new floor?

A. No, it appeared to me to be concrete slab that had [27] perhaps been there for some time. How long, I wouldn't estimate, but it didn't appear to be new.

Q. The wall of that building,—for instance, the wall on the west side, did that appear to be a new structure?

A. The portion of the building that you refer to on the west side, the west wall, appeared to me that you were making use of some sort of it. That had been there for some time as that side of the building.

(Testimony of Marion J. Akers.)

Q. And the south end of the building?

A. The south end of the structure was, as I recall, the portion of your other facility there,—the house, the diningroom, the bar, and kitchen, and so on. That was tied into the structure there.

Q. In other words, from the way you describe it now it appears to you like structures there that would be an expensive thing for the Air Force to have that demolished, if necessary? Is that true or not,—referring to the new part?

A. We come to a question of the definition of “expensive.”

The Court: I don’t think that is the question. The question is the addition of any structures that would have to be considered by an appraiser in determining valuation, and if it has any value at all, that would be a material matter to consider on a motion like this. It does not make any difference whether they can break it down. [28]

Mrs. Barnes: I am not sure, your Honor, that I understand the situation.

The Court: That is the trouble.

Mrs. Barnes: Wait just a minute. I am not sure that you understand the situation. I think I do.

The Court: Don’t worry about me. I probably understand it too well.

Mrs. Barnes: There was a condemnation case filed on January 27th.

The Court: That is right.

Mrs. Barnes: And there was a declaration of

(Testimony of Marion J. Akers.)

taking I believe signed by your Honor two days later.

The Court: That is right.

Mrs. Barnes: Or, no, it was filed simultaneously on the 27th. Then your Honor I believe signed an ex parte judgment on the condemnation suit.

Now, there has been a motion to dismiss, a motion to set aside the declaration of taking and vacate that ex parte judgment, and there is a motion for the possession of the property.

Now, as I understand it, should these motions be tied, that is, the motion to dismiss and the motion to set aside the declaration of taking, be tied before the court in which that case is pending? The question of value does not enter into anything that I might put there for temporary use, because [29] the value would be considered as of the time of condemnation.

Is that not so, your Honor?

The Court: I am not answering questions, Ma'am. I warned you in advance that I am not answering questions.

Mrs. Barnes: All right.

The Court: However, I want to tell you that no judgment was entered. What I entered was the decree which the law authorizes me to enter. It is a decree on the condemnation of taking, the object being to fix the time the property passes into the hands of the Government. By the declaration of taking it automatically passes on, but this decree merely helps to fix the time, and that is the type of

(Testimony of Marion J. Akers.)

decree which I have been entering ever since I have been on this court, and before that time I entered them when I was on the Superior Court in condemnations instituted by public bodies. So no ex parte judgment was entered, and that is the kind of a decree it is.

Q. (By Mrs. Barnes): Col. Akers, I would like to show you these three pictures. They show, as you described it, I think, that there are the up-rights. Is that correct?

Will you name what is there? Maybe you can see them better.

A. I don't see it from here. This portion that you pointed to here earlier had—I would estimate them to be 10 by 10 timbers, the uprights, supporting an upper framework. [30]

Q. An upper framework. And how about the walls there?

A. Well, this wall here to which I point, which you refer to as the west wall of the building——

Q. Yes.

A. ——was the one I made reference to, which I said to me appeared to be a wall that had been there for some time, and you were making use of that.

Q. And the south wall?

A. The south wall,—from this photograph, I would say this apparently is the north end, the northeast end of your building.

Q. Here it shows again, a part of the same

(Testimony of Marion J. Akers.)

structure. In other words, you do not believe that to be an entirely new structure?

A. The building marked "B", Exhibit B in the photograph is, in my opinion, a new structure, which is making use of upright timbers and supported framework that had been there previously.

Q. Including walls?

A. Including a wall, or two walls possibly, and a prior concrete slab.

Q. Now, there is one other thing I would like to straighten out for the court's benefit. How far does the present runway, the new runway under construction——

Mr. Weymann: That is objected to as entirely immaterial, [31] and having no bearing on this motion.

The Court: The objection will be sustained.

Mrs. Barnes: I want to make an offer of proof, your Honor.

The Court: Go ahead and make your offer of proof.

Mrs. Barnes: It is stated in these affidavits that my buildings and structures are in the way of the extension of this runway, and the ordinary construction of the runway, in several places.

Your Honor, it was brought out very clearly in this same case that the Air Force hasn't got any intentions whatsoever of constructing any runway.

The Court: I am not going to go into that on this matter.

Furthermore, I call your attention to the fact

(Testimony of Marion J. Akers.)

that the only judgment that exists in this case is a judgment which was entered after you joined with others in a petition to partially pay you almost \$200,000, or to pay to certain people some \$200,000.

Mrs. Barnes: Your Honor, I think you have mistaken those dates.

The Court: Yes, the dates are March 10, 1953.

Mrs. Barnes: You will find the judgment that you signed was in February.

The Court: That was not the judgment. It was the judgment [32] on the declaration of taking.

Mrs. Barnes: Yes, the judgment itself was signed before we were notified.

The Court: There is no judgment. There is no judgment at all. That is not a judgment. That is an order which the court is allowed to make, and no notice is provided to anybody, because the law so states. There is no ex parte judgment. I do not want the record to show that any judge of this would enter a judgment without a hearing. I am even giving you a hearing on this, to which you are not entitled. I could have issued an injunction for 10 days, without any hearing, and I didn't do it, so I know what I have done. The decree on the declaration of taking is not a judgment. It merely confirms the fact that the property has been taken by the Government, and the law says that the moment the declaration of taking is filed the title to the property passes to the plaintiff, and the decree of the court is merely made for the purpose of

(Testimony of Marion J. Akers.)

fixing the time. That is for the reason that many a time the time is hard to fix. For instance, in 1942 some people in Fresno, who had a ranch opposite the college went away over the week-end. They had some ten to twenty acres, and when they came back they found guards placed there by the Army. In the meantime the Government had filed a condemnation case and had taken over the property, and had placed the guards there, and the place was [33] being used to locate the Japanese who were being interned at that time.

Now, they did not ask for any order of court because the declaration of taking automatically transfers it. Yet when we tried the case, because there was no order of court, we were not sure as to what date possession was actually transferred. So we had to have an agreement on a date on which the soldiers took possession.

Now, to avoid situations like that it is customary at the present time for the Government to come into court the moment the declaration of taking is filed, and to ask for a decree on the declaration of taking, which merely confirms that the Government has taken the property by the declaration of taking. While the wording is, "It is ordered, adjudged, and decreed," it merely confirms what by statute the filing of the complaint has already accomplished.

All right, you may go ahead.

Mrs. Barnes: I think that is all, Col. Akers.

Mr. Weymann: No questions.

(Testimony of Marion J. Akers.)

The Court: All right. Step down, please.

(Witness excused.) [34]

Mrs. Barnes: Col. Yagel.

The Court: I will swear you. The clerk had to go. And then if you will state your name for the record.

HENRY W. YAGEL

called as a witness by the defendants, under the provisions of Section 43(b) of the Federal Rules of Civil Procedure, having been first duly sworn, testified as follows:

Direct Examination

The Witness: Henry W. Yagel, Lieutenant Colonel, U. S. Air Force.

Q. (By Mrs. Barnes): Col. Yagel, you made an affidavit to the effect that the building was not in existence during and immediately after the fire which occurred on November the 14th at the ranch?

A. That is true.

The Court: Here is your affidavit. It is a very brief affidavit.

(The document was handed to the witness.)

Q. (By Mrs. Barnes): Are you familiar with the premises? A. I was from that date.

Q. From what date?

A. The date of the fire, the 14th of November, 1953.

Q. When were you at the premises and looked at this [35] building?

A. As the fire marshal of the Air Force Base,

(Testimony of Henry W. Yagel.)

I responded to the fire call on the 14th of November, and as of that date I stated that the structure was not there.

Q. When you state that a structure is not there, you mean there was nothing there?

A. The structure that I referred to is the one in question now. That did not appear on the date of the fire.

Q. It wasn't there?

A. No. Some of the—go ahead. Ask your question.

The Court: You go ahead and finish your answer.

The Witness: What I was going to state is that the existing structure in question is making use of some of the buildings that were there, possibly.

Q. (By Mrs. Barnes): How much of the buildings that were there, possibly?

A. That I wouldn't want to answer, because I feel that the structure was not completed to a point that I have any idea as to what you intended to do, or what anybody else may have had an intention of doing.

The exterior walls that were there at the time of the fire may be used as a part of the new building that I have seen recently.

Q. When you say "building," what now constitutes the building versus what constituted the building at the time of [36] the fire?

A. I don't know whether I get your question just clear enough.

Q. Well, what was there at the time of the fire?

(Testimony of Henry W. Yagel.)

You have stated that there was no building existing there. Now, what was there at the time of the fire?

A. Well, you had a building that was apparently a dining-room, and led off into another building, and then there was the pool with a considerable paved area around the pool. That was in existence at the time of the fire.

Q. Regarding the building in question, were there any walls or uprights or overhead rafters?

A. There were no rafters or structures that were there last week.

Q. I want to show you these pictures that are an exhibit. Would you say that this was the area in question (indicating)? A. Yes.

Q. These pictures were taken prior to the 27th of November, sometime before then. This present so-called building that you are referring to, would this be the south wall (indicating)?

A. It could be.

Q. Would this be the back wall?

A. It could be. [37]

Q. Would this be the uprights?

A. It could be.

Q. Were these the cross members?

A. It could be.

Q. Was that area paved?

A. That area was paved. There has been a considerable modification, though, since then.

Q. When you say a considerable modification, what do you mean?

(Testimony of Henry W. Yagel.)

A. There was an exterior wall put up, framed with 2 by 6 studdings. This roof has been framed with a hip roof, roof rafters. The roof has been covered with the construction material of plastic-covered roofing material, such as you were using as a roofing material.

Q. In other words, there is a roof and certain filling in along the edges; is that correct?

A. Yes. At the time of the fire I would say it was possible to circulate about the pool. At this time it is impossible to circulate about the pool. The new structure has stopped the circulation that may normally have existed.

Q. In what way would it stop it?

A. The construction has been put up and extended to the extent to which it is impossible to circulate about the pool, as you could previously.

Q. What is stopping you from circulating? [38]

A. This new structure that is going up, and this studding that is filling in on the side.

Q. Did you walk into this structure?

A. Yes. When, may I ask?

Q. The other day when you were there?

A. The other day, yes.

Q. You walked around it?

A. No, I could not walk around it.

Q. You could not walk through it?

A. I could not walk around it; because of the obstructed passage around the pool, you would have fallen in the pool.

Mrs. Barnes: All right. That is all.

(Testimony of Henry W. Yagel.)

Mr. Weymann: No questions.

The Court: All right. Step down.

(Witness excused.)

Mrs. Barnes: Mr. Weymann, will you please take the stand?

AUGUST WEYMANN

called as a witness by the defendants, under the provisions of Section 43(b) of the Federal Rules of Civil Procedure, having been first duly sworn, testified as follows:

The Clerk: Your name is?

The Witness: August Weymann. [39]

Direct Examination

Q. (By Mrs. Barnes): Mr. Weymann, did you make an affidavit in this present hearing?

A. I did.

Q. Will you please refer to that affidavit as soon as his Honor is through?

The Court: Here it is.

The Witness: Oh, I have it right here.

Q. (By Mrs. Barnes): Will you refer to page 2 of your affidavit, lines 10 and 11. I haven't got a copy, but if you will please read them so my question is in the record.

A. 9, 10, and 11. "That thereupon and thereafter, and pursuant to petition to this court made by E. S. McKendry, Florence Lowe Barnes, also known as Pancho Barnes, and William Emmert

(Testimony of August Weymann.)

Barnes, as the ostensible former owner of said lands,"——

Q. Wait a minute. Is that page 2 of your affidavit? A. That's right.

Q. Lines 10 and 11?

A. That's right. Lines 10 and 11 would not make sense unless you read the preceding portion.

Q. I believe there is another affidavit, is there not? You are talking about——

A. My affidavit?

Q. You have another affidavit here, have you not? [40] A. No, I have not.

Mrs. Barnes: I have got the lines wrong then.

The Court: This is the only affidavit. There is a motion and a petition signed by Mr. Weymann, but not an affidavit. It is not an affidavit. This is merely the grounds for the motion. Is that what you refer to?

Mrs. Barnes: The grounds for the motion. Then possibly what I am interested in is if they are made on these grounds. That is very pertinent.

Q. (By Mrs. Barnes): Will you please read from lines 7 down through 11? That will be far enough to put over the point I am trying to make.

A. I have read them.

Q. Will you read it out loud, please, so that his Honor and the clerk may get it?

A. Well, it is a part of the record. If the court wishes me to read it, I will.

The Court: Go ahead and read it.

The Witness: "That the continuation of said

(Testimony of August Weymann.)

acts by said defendants will cause immediate and irreparable injury, loss, or damage to the United States of America, in that it will be put to additional expense for the removal and demolition of said buildings and structures on said land, in order to construct the airplane runway for which said property was acquired." [41]

Q. (By Mrs. Barnes): Mr. Weymann, you know something of the plans of Edwards Air Force Base?

A. Nothing except what I have heard in the testimony of the various hearings held in this matter, and because of maps and records and the usual data which is furnished to the office of the Attorney-General by the acquiring agency.

Q. Would you say that the ranch, my ranch and any structures on it would have anything whatsoever to do with the construction of the present runway?

A. I have no opinion on the subject, because I do not feel competent, and it is not my business to determine that.

Q. But you stated that in a motion here to the court.

A. I didn't state it in the motion to the court. The motion was based on the representations of the acquiring agency.

Q. Don't you feel that the court might be misled by statements like that? A. I do not.

The Court: I want to call your attention to the fact that this is a motion for a temporary restraining order which I did not issue.

(Testimony of August Weymann.)

Mrs. Barnes: There is also on lines 22 and 23——

The Court: But in lieu of that I issued merely an order to show cause.

Mrs. Barnes: That is what we are doing. I want to refer [42] to lines 22 and 23.

The Court: Let's not argue with counsel. When it comes time for the arguments, he can make his argument, and you can make yours.

Mrs. Barnes: He has made a statement, your Honor, that we knew something; in other words, it was our knowledge. This is something that is definitely not a fact, and I don't want your Honor to be misled by that.

The Court: Don't worry. I am not easily misled.

Mrs. Barnes: Very well. That is all, Mr. Weymann.

The Court: Step down.

The Witness: Thank you.

(Witness excused.)

Mrs. Barnes: Mr. McKendry.

EUGENE S. McKENDRY

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Will you state your name, please?

The Witness: Eugene S. McKendry.

The Court: Now, unless you are going to show

(Testimony of Eugene S. McKendry.)

this witness photographs or documents, I am going to again insist that you be seated. Otherwise, you cover the reporter and [44] it makes it very difficult to hear.

Mrs. Barnes: I am sorry, your Honor.

The Court: If you were on the witness stand, you would probably object to it. I know many women who are witnesses do, and so do men.

Mrs. Barnes: I am sorry.

Q. (By Mrs. Barnes): Are you a defendant in this case? A. I am.

Q. How long have you known the property in question? A. Eight years.

Q. Will you please state how long the present structure referred to here has been erected, approximately, of your own knowledge? How long has it been there,—of your own knowledge, in other words?

A. When I arrived at the ranch over eight years ago the walls of this present structure referred to as "B" in the photograph were there, and on my first year at the ranch the floor was put in, so the floor is approximately seven and a half years old.

The rest of the structure, the 12 by 12 heavy timbers that are 42 feet long, or 43 feet long, and the poles have been in place for approximately a little more than two years. That is the heavy timbers, the upright poles. And quite a lot of the cross rafter structure has been there approximately more than two years. [45]

(Testimony of Eugene S. McKendry.)

The Court: What, if anything, has been added since this action was filed? You see, I worded it "if anything," so I don't assume that anything was added. The date of the filing of the action was February 27, 1953.

The Witness: Just the plastic glass has been added.

The Court: At the top?

The Witness: At the top.

The Court: Covering——

The Witness: Covering the roof.

Q. (By Mrs. Barnes): Weren't there some beams to the poles that were already put in there?

A. Yes, there were 6 by 6 cross beams across the top of the heavy timbers that were at the top of the building. The building had been in use for, as I say, a couple of years.

The Court: Without a roof?

The Witness: It had a partial roof on it, your Honor. It was a sunshade roof.

Q. (By Mrs. Barnes): In other words, one sunshade roof was replaced with another sunshade roof?

A. Yes. The other one was not waterproof, and this plastic glass was substituted to make it waterproof.

Q. To clear up the kind of material. I believe it was testified it was screen. What type of plastic glass does that consist of?

A. I believe you call it Cello-clear or Cellocose. It [46] is a quarter-inch mesh nylon fibre screen

(Testimony of Eugene S. McKendry.)

with the plastic embedded or sprayed on, and it is waterproof.

The Court: That is right. It looks like a screen and let's the light in but doesn't let the water through?

The Witness: That's right.

Mrs. Barnes: Your witness, Mr. Weymann.

Cross Examination

Q. (By Mr. Weymann): Mr. McKendry, isn't it a fact that plywood sheathing forming a wall with openings on the side next to the swimming pool was constructed there after the Government acquired title to the property in February, 1953?

A. A small part, yes.

Q. Isn't it true that the rafters were put up on the building? A. A small part, yes.

Mr. Weymann: That is all.

The Court: All right, Mr. McKendry. Step down.

(Witness excused.)

Mrs. Barnes: I could put myself on the stand, your Honor, to bring out the facts of the case.

I would like to make a stipulation in writing, if it would satisfy Mr. Weymann and the Air Force, that we will construct nothing that will in any way be of any cost to them to demolish [47] or tear down anything that we may put up, such as a sunshade, or that we will remove it at our own expense.

I think that this has been a tempest in a teapot, and much ado about nothing, and I believe it is

meant to use the courts more to harass me than a matter of justice, because I think you can see from their own testimony and from ours that there has probably been \$100 or so worth of work put in, plastic glass and some used lumber, and a few pieces we had to hold the plastic glass, little strips to put over the structure that was there, and I don't see where——

The Court: Now, let's proceed regularly. You have had Mr. McKendry testify.

Mrs. Barnes: I would be very glad to take the stand, if a stipulation is not acceptable.

The Court: It isn't necessary. As far as a stipulation is concerned, it is up to counsel to say whether he will accept the stipulation.

Mr. Weymann. The stipulation is rejected and the Government objects to any improvement or any change in the status of the property.

The Court: Then let us go on. The Government will not accept the stipulation. If you desire to go on to add further details relating to this matter, all right, but let's not go beyond the matter before us. Do you desire to take the stand?

Mrs. Barnes: I do, your Honor. [48]

FLORENCE LOWE BARNES

(Pancho Barnes)

called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination

The Clerk: Will you state your name for the record?

(Testimony of Florence Lowe Barnes.)

The Witness: Pancho Barnes. On November 14, 1953, there was an incendiary fire and an explosion which demolished the dance hall, my own house, and everything I had in it, the chicken coops and a summer kitchen.

We had previously advertised that we were going to have a dance on December 2nd, and about two weeks before that date a fire was started in that building, and it would have had to be a set fire because otherwise it could not have occurred. There was nothing there to start a fire.

I wished to have a little more room on the place there during the wintertime where people could get out in the breeze. My husband and I took a structure that was already there on the place, that consisted of a concrete floor and walls on the west side and on the south side, and actually there was a wall on the north side, and also a part of a wall which consisted of a bunkhouse, and all that there was there.

There were large poles, very heavy poles holding up great beams, and there were cross beams. We decided that the wall was a good windbreak, and that people could swim, and [49] could dance there in the evening if we protected the place from the wind. And, consequently, we wanted to do it very inexpensively, and we put on the building the plastic glass, and we framed in the front of it, intending also to put plastic glass down the front side of it.

We did have in mind at one time putting a fireplace in, but as the spring and summer is coming

(Testimony of Florence Lowe Barnes.)

on very rapidly, we abandoned that idea. So that the building actually at this time is as complete as it will ever be, except possibly for the addition of some paint, which would just make it look a little better. And that is the extent of the situation.

We have not made any move to rebuild or construct the buildings that have burned down, or any other building in the guest ranch, just for the reason that we realized that in the event that the motion to dismiss this case or the declaration of taking be set aside, and the condemnation suit would be, that the value would be set at the time of condemnation, and any money we would put in we would lose; and it was far more interesting to us to save that money than anything we might build that the Air Force would have to tear down at any expense on its part.

The Court: Is this where the old Air Academy used to be?

The Witness: It was. I trained students there.

The Court: During the war for the English?

The Witness: No. That was the War Eagle just west of Lancaster.

The Court: Where is this?

The Witness: This was where I was training students for civilian pilot training, your Honor. This is east of Lancaster.

The Court: Oh, I see.

The Witness: East and north.

The Court: I ask that because I handled a law suit involving—what was the name of the major

(Testimony of Florence Lowe Barnes.)

who owned that academy after the Government gave it up? What was his name?

The Witness: I don't remember.

The Court: Do you, Mr. Weymann?

Mr. Weymann: I don't know.

The Court: Oh, they trained British pilots during the war.

The Witness: Oh, Major Moseley.

The Court: Yes, Major Moseley. That is not this place?

The Witness: No, that is not my same place. That is west of Lancaster.

The Court: I see.

The Witness: This property that the Air Force is taking in the expansion of the field is on to the east of Lancaster.

The Court: I just wanted to locate the property, because [51] I have been on that Moseley property several times, and recently I had a law suit involving the various corporations that Major Moseley formed, and all these operations were described, and I wanted to know where it was located with reference to that. That is all right.

The Witness: I knew Maj. Moseley very well. I flew for him at one time.

The Court: I see.

The Witness: Regarding the situation, your Honor, we are not interested in putting any money in that we won't get out. That is only reasonable.

The Court: This is argument. Let's finish with

(Testimony of Florence Lowe Barnes.)

your testimony, and then I will let you argue the matter.

Mr. Weymann has a right to cross examine you, and then if he does not offer anything, I will hear argument on both sides as to what, if any, process should issue, and, if so, what it is to be limited to.

Have you finished your statement as to what changes have been made?

The Witness: It was merely taking the structure that was there.

The Court: As I understand it, you have already done it, except possibly for some painting?

The Witness: Painting, that is right.

The Court: All right. Mr. Weymann, any questions? [52]

Cross Examination

Q. (By Mr. Weymann): Are you going to put in any windows?

A. We already have the windows, Mr. Weymann.

Q. When did you put them in?

A. They aren't in, but we have them. They are on the place, and we have those windows. We already had them in other buildings.

Q. It was the dance hall that burned down?

A. The dance hall, and my home, and the chicken yard and the summer kitchen.

Q. And this structure which is the subject of this motion you intend to use for a dance hall; is that correct?

A. Not entirely, no.

Q. Partially?

(Testimony of Florence Lowe Barnes.)

The Court: In December of what year was that fire?

The Witness: Oh, it was just last November, November 14th.

The Court: November of last year?

The Witness: Yes, sir.

The Court: I see. Go ahead.

Mr. Weymann: I think that is all.

The Court: All right, Mrs. Barnes, step down.
(Witness excused.)

The Court: Anything further by way of evidence? If not, [53] I will hear any argument you desire to present.

Mrs. Barnes: I am through, your Honor.

The Court: Mr. Weymann?

Mr. Weymann: Nothing further by way of evidence, your Honor.

The Court: All right. I will hear any comments you desire to make.

Mr. Weymann: I think the testimony of the defendant, Mrs. Barnes, clearly sustains the Government's motion. All of the testimony the plaintiff adduced here this afternoon goes to the matter of the result that has been performed, and not to the fact that there have been improvements made of that property and that there have been previously available materials used to complete that structure to the extent that it has been completed.

Our position is this: that the Government, as the owner of that property, has the absolute right to have the status quo maintained until the determin-

ation of this action. Not only because of the expense, whether it be great or small, in demolishing these structures eventually, but because of the difficulty of having a proper appraisal made.

I think it is elementary, and I need not argue with your Honor on that point, that the owner of the property has the right to determine what should or should not be done with it, and it is on that basis that we ask that these [54] defendants be restrained from in any way changing the character or the condition of that property.

The Court: All right, Mrs. Barnes.

Mrs. Barnes: I am very, very glad, your Honor, to make a stipulation in writing that we won't change the character of the property, and that we are not trying to do anything that would in any way cause the Government expense or inconvenience. And I think I should not have objected to have an injunction put against me, but I feel it unnecessary, and I will be very glad to make a written stipulation that I will not cause the Government any expense. As far as this very small project, it certainly has cost far less than Mr. Weymann's salary, and the salary of the Air Force officers, and your time and the clerk's time, and the reporter's time, and everybody that is here.

We are all down here on a very, very small item, and it seems to me it is very unnecessary, your Honor, and very unfair.

As far as the statements in the affidavits on the motion there of Mr. Weymann, that the place is necessary to construct a new runway, that is ab-

solutely untrue, and that all came out in the past testimony, and is of record under oath.

As far as the runway is concerned, we know it is never going to be there, and the Air Force wants this property——

Mr. Weymann: If the court please, while this is argument, [55] I doubt very much if it is a proper form of argument. As far as the runway is concerned, we are not concerned with that now.

Mrs. Barnes: You have made those statements, Mr. Weymann, and they are allegations in your motion.

The Court: All right, Mrs. Barnes.

Mrs. Barnes: That all came out in the case.

Another thing, too, your Honor, we have a case before the court.

Now, you stated your opinion regarding condemnation cases, and the necessity of the Government, and in the main I think that that is quite all right. But there is always an exception to every rule, your Honor, and as far as this case is concerned, we have, I believe proved bad faith, and we have also proved lack of necessity, and there are rulings already on that.

Furthermore, we have definitely shown a prima facie case that the amount of money deposited was not correct. It very well may be that the honorable judge on this case might uphold my motion to dismiss the case and set aside the declaration of taking, and in the mean time, until that case is decided, and in the event that he does not grant my motion, and does make an order to the Government

for possession, at some time or another there still is a condemnation case to be heard. [56]

And, your Honor, from the stand and in this case, you can find in the record and in the testimony that their own witness, the chief of installations, Col. Miller from Baltimore, definitely stated it would be the end of December of this present year, 1954, before they expected to have any of this runway completed, or in any way could use the property here in question, and according to the way the work is going, I doubt very, very much if it will be by the first of 1955 before anything is available.

In the meantime, your Honor, I pray that you do not grant an injunction against me. I am willing to sign any stipulation that is just and proper, and agree that I will not cost the Government any money. But I believe, your Honor, that they are not trying to stop me in construction, and they are not worrying about how much money they cost the Government, any of them, because there have been things that have showed up that prove they are not worried about the cost to the Government.

What they are anxious to do is to try to hamper me in anything I might do to keep myself going until these affairs are settled, and I do have a heavy overhead.

The Government has put me in the position, your Honor, of forcing me to fight. I had a ranch there, a large establishment of a hotel, a bar, a restaurant, of being in the hog business, the horse business, the cattle business, and [57] fields, and an airport,

and a very, very large place, on which I turned down on two separate occasions a sum of a million and a half dollars for.

There were over 40,000 square feet of buildings, including this building they are making such a fuss about today on those premises previous to the fire, and at the time of condemnation, and yet they only put up the infinitesimal sum compared, of course, to to the project and the moving of it, of \$205,000.

The Court: The Government is good for any balance there might be.

Mrs. Barnes: That may be true.

The Court: Many a time the Government forms its own estimate, and later on when a judgment is secured, we make an order ordering the Government to furnish the additional amount.

I tried a case, and Mr. Weymann was in it, which was tried before a jury week before last, and in one instance the award was some \$20,000 more than the highest appraisal by the Government, and in the other it was only about \$1500 higher. If there isn't enough money deposited in the entire condemnation suit to cover everything, an order will be made ordering the Government to put it in. And that does not obtain as to the Government of the United States alone. Under the laws of California, the same happens if the County should [58] want your property. They go in, form an estimate of the amount, make a deposit, and take possession immediately, and then if there isn't enough, then later on when the actual award is

made, the Government,—the State Government, City, or County, must pay the balance.

Mr. Weymann: I might add that in this case \$194,000——

The Court: Has already been paid?

Mr. Weymann: ——has already been paid to this date.

Mrs. Barnes: Without prejudice. Mr. Weymann stipulated that, that that is without prejudice. He is always dragging that in. I wish I could move your Honor——

The Court: Well, if the judge were to dismiss the suit, he would order you, before he entered the dismissal, to return the \$194,000, and he would have to make that as a condition precedent.

Mrs. Barnes: That would be a very fine thing. What I am trying to say is they put me in a position in which it is impossible for me to move 40,000 square feet of buildings, two race tracks, livestock, fences, and various miscellaneous buildings, as well as irrigation systems, pumps, and so forth. They put me in a position where I could not move.

There are cases on that, your Honor. There is one case, for instance, I know, *United States vs. 40 Acres of Land in New York State*, where the Air Force put up \$200,000, when they had already talked about paying \$500,000, and the court there [59] set aside the declaration of taking and vacated the ex parte judgment the Air Force got.

The Court: I am not interested in what the judge there did. I am interested in this particular case.

Mrs. Barnes: When the property is taken, and the property has been taken by the Government, and when sufficient compensation is not put up, then it is against the Fifth Amendment of the Constitution, your Honor, to do it.

The Court: All right.

Mrs. Barnes: They say that has nothing to do with this case. What I am saying now is I am very willing to stipulate in writing——

The Court: They are not willing to accept it, so there is no use in repeating it, and I shall have to rule on the matter.

Mrs. Barnes: Well, I have done nothing, your Honor, and they have proved nothing.

The Court: Let's have some order here. It is their motion, and they have the beginning and the ending.

Have you finished now?

Mrs. Barnes: No. I think you have already made up your mind, probably before this case started, and that is to issue an injunction against me.

The Court: Please sit down now. You have finished your argument. [60]

Mrs. Barnes: Can I have a rebuttal then?

The Court: No, because it is their motion. They have the right to open, you see, and they have the closing.

Mrs. Barnes: May I say one thing,——

The Court: No, please be seated.

Mrs. Barnes: ——and no more.

The Court: No, because you are treading on dangerous ground. I may have to send you to jail

if you insist on that type of statement for contempt of court. I haven't made up my mind about this matter. If I had made up my mind, I could have granted an injunction in this matter. I did not do so.

It is unfortunate that in many of these cases so much feeling goes into these matters, and it will crop out. People are attached to property, and they don't want to sell, and much sentiment is brought in, which unfortunately has no place in these cases. This isn't the only such case. In many cases they say they don't want to sell at any price, that they are happy, that their property was not for sale. But the fact remains, as I have said before, that the power of eminent domain is one of the greatest powers of Government, and without it the Government could not exist. And when I say "the Government," I mean Government in the general sense,—the Federal Government, the State Government, the County Government, the City Government. [61]

I happen to have been a judge of the Superior Court of Los Angeles County before I became a judge of the Federal Court, just as Judge Beaumont was a judge of the Superior Court of Fresno County before he became a judge of the Federal Court, and we have conducted trials and we have set in judgment in these cases, and we try to limit them to the only issue that exists under the Constitution.

The Constitution says that private property shall not be taken for public use without just compensa-

tion, and the Supreme Court of the United States has decided in dozens of cases that the only right that the property owner has is the right to receive just compensation for his property, and that is all that is involved.

As a matter of fact, years ago in California a litigant could dispute with the Government whether the property was needed for an improvement and whether, for instance, the taking was as it should be. To illustrate: If, for instance, the County of Los Angeles wanted property for a road, and they took the property from one side of what had been a road before, the property owner could come into court and for weeks put his engineers on the stand and try to demonstrate to the jury and to the court that they did not need the property, or that they could get it elsewhere. So the legislature of California passed a law, which is identical with the law of the United States, which says that when a [62] declaration of taking is filed, when a complaint is filed and money is deposited, that the title to the property passes immediately, subject to the right to have determined, either by arbitrators or by the court, the value of the property.

The law also says that the passage by the administrative body, that is, by the board of supervisors or the board of city trustees, or whatever you may call them, the city councilmen, of any ordinance of intention shall be conclusive proof, first, that the property is needed and that the purpose is a public purpose, and, secondly, that the taking in the manner described by the Government is a

proper taking. That is also the law of the United States.

I filed an opinion here last year in a series of cases involving Friant Dam and the property needed for a canal, in which I stated that those principles applied; that the owners cannot come in and tell the Bureau of Reclamation whether they needed the property for canals or not, or whether they should be taking that property or not.

Now, to get back to the State. There was a woman who owned a tremendous amount of property, and she was just as proud of her property as Mrs. Barnes is of her property here. Her name was Rindge, and she owned the Malibu Ranch, all of the property from the foot of Wilshire Boulevard up to Oxnard in Ventura County. All that Malibu Ranch was her own property, the result of an old grant. [63]

The County of Los Angeles brought suit under this new law. Mrs. Rindge was dissatisfied. She did not want the property taken. She did not care whether Malibu Road was ever opened, or whether you could get through there. She said, "I want to keep my property intact. I want to keep the people out."

She went to the Supreme Court of the United States, and she complained of the fact that she was deprived of due process because of not being allowed to contest with the State Government or the County Government the question of whether the improvement was needed, the question of whether the property should be taken, and the manner in

which the property was taken. She said her constitutional rights had been invaded.

The Supreme Court of the United States held that the only thing she was entitled to under the Constitution of the United States, or under the Fourteenth Amendment, which makes the due process clause of the Fifth applicable to states,—that the only thing she was entitled to was to prove to a court or jury the just compensation to which she was entitled; that the legislature had a right to say that whenever a certain thing is to be done, it shall be conclusive proof that the County agency or the State agency needs it.

Now, the federal law is identical with that, and the Supreme Court has had occasion to pass on it repeatedly, as I [64] pointed out in this opinion filed about a year ago. I think it was last February I filed it.

Mr. Weymann: I have it here, your Honor.

The Court: In what case was that?

Mr. Weymann: I will give you the citation. It is United States vs. 297 Acres of Land in Madera County.

The Court: That is right. So the Supreme Court has recognized the power of the legislature and the power of the Congress to say that upon doing certain things, the Government shall be entitled to take the property, and that the only thing that shall be left to the defendant is to prove in court the amount of money to which he is entitled. That is exactly what we instruct juries in these cases to do.

In the last case I tried the instructions I gave were so satisfactory, not only to the Government, but to Mr. Burrill, who represents probably the most famous firm in California in this type of litigation—it used to be Judge Bledsoe's firm and was called Bledsoe, Hill, Morgan & Farrer, although now I think it is Hill, Farrer and somebody else——

Mr. Weymann: Hill, Farrer and Burrill.

The Court: ——Hill, Farrer and Burrill—as I say, the instructions I gave were so satisfactory and the award involved on the property was nearly \$80,000, these men did not for one moment disagree with the instructions that I gave to the jury, and what I have just summarized is one of the instructions we [65] give in all these cases, to point out to the jury what rights they have.

As a matter of fact, in that case one of the owners, Dr. Tamplin, testified. She was a doctor of medicine and she said her family had paid taxes for 80 years on the property. I thought she was trying to get the sympathy of the jury, so I told the jury that, unfortunately, the law does not consider sentiment, and that the fact that she may not want to part with the property for sentimental reasons has nothing to do with the valuation, and that portion of the instructions was not objected to. I make this statement because we judges frequently are in a very embarrassing position when litigants who can employ attorneys do not employ attorneys. Of course, if people are indigent, then you are sorry for them. But when people who can employ

attorneys do not employ attorneys, we are in a very peculiar position, because we are dealing with people who have certain definite ideas, and you cannot treat them as you do lawyers, because you have to respect their lack of knowledge, as it were, and so we try to lean backwards in these cases, as I did in this case.

If I had known from the record that Mrs. Barnes and Mr. McKendry, and the other defendant, were represented by attorneys, I would have issued the temporary restraining order for a period of 10 days, and made this returnable later on, [66] because a lawyer would have understood. But I knew Mrs. Barnes would not understand, because she does not understand the law. She has already accused me of having made up my mind. Of course, I have a right to make up my mind after I have heard the evidence in the case. I do not have to take a matter like this under submission and think about it for a month before deciding it. We have to make up our minds when an injunction matter is presented to us very quickly from the facts.

So what we bear in mind is this, to get back to fundamentals: The Congress of the United States has said that whenever a complaint is filed, the property automatically passes into the hands of the Government. The Government does not even need a declaration of taking. But the Government to be safe, as I explained before, in order to fix a date for the transfer of title of the property asks for a decree, called a decree of declaration of taking, and in this particular case that decree was

entered on the same day on which the complaint was filed.

That was on the 27th of February, and later on, in March, a request reached me for withdrawal of the money deposited. On March 31st a petition reached me and the petition was presented by Mr. E. S. McKendry, William Emmert Barnes and Florence Lowe Barnes, also known as Pancho Barnes, which prayed the court for an order directing the clerk of the court to pay [67] out of the funds on deposit certain sums of money. There were several of them. A small one which called for \$7,560.95 to the Collector of Internal Revenue, and one to the State of California for \$1,841.78, and then another one, I think, for \$194,000.

Mr. Weymann: That is the aggregate of all of them, your Honor.

The Court: Wait a minute. Here it is,—\$172,-753.76.

In the petition it was requested that this be credited against the account of any compensation to be received by judgment entered in this court determining the compensable injury.

Of course, every such order we make, and we make quite a number of them, is postulated upon the proposition that the title to the property is already in the hands of the Government, and that they are entitled at least to that amount. We keep some back, and, of course, it is without prejudice; that is, it means that the Government may have to pay more. But when the owners apply for it, ordinarily it is assumed that they do not expect the

proceedings to terminate. They expect the Government to go through. Otherwise the Government would not do that, because if it did, as is done sometimes in the State, you run into this situation: that is, we have a famous case in California where the Los Angeles Times owned property, the old Times Building, and it was [68] condemned by the State, and after an award was made, which the State said was too high, they went and dismissed the case, which under the law they could do. The Los Angeles Times went to the Supreme Court of California and convinced that court that that would be unfair to them. They showed, for instance, that they had acquired a new site, on which the new building now is, and on the basis of estoppel, as the court held, by instituting the proceedings and conducting them, as they did, the State had led the defendants to believe that they intended to go through with it, and that while technically that is a matter of law, that they had a right to abandon it, it would be inequitable to let them abandon it. The Supreme Court said that the Los Angeles Times was right, and the City of Los Angeles was forbidden to dismiss the suit and was compelled to pay the amount of money that had been found.

So a lot of thing come into these cases. Condemnation law is very intricate. I admire Mrs. Barnes' courage in thinking that she can properly present the intricate matters that the law of condemnation and the law of compensation presents. There are not one hundred lawyers in the State of California out of seven thousand who know a great deal about

condemnation law, and there aren't more than five or six firms out of four thousand lawyers in the County of Los Angeles who will even take such a case, because it is so [69] complicated in its ramifications.

I am making this statement to point to the fact that the Congress has made certain rules and regulations, and the Supreme Court has said the rules and regulations are the law.

This property is already the property of the Government of the United States, and the Government of the United States has a right to say that nobody is to change the contour of that property. The fact that the judge might set aside and make the defendant return the \$192,000 is a possibility that we need not concern ourselves with here. But for the present, so far as the law is concerned, the property is the property of the United States of America, subject to the right of the defendants to receive, in addition to the money they have already received, such additional sum as a judge or jury shall determine is the just compensation as of the day of taking, which is as of the 27th of February, 1953.

So it is an elementary proposition that the man who owns property has a right to have an injunction against anyone, whether he occupies it by consent or otherwise, from putting any structure on it without the consent of the Government.

If I lease property to you, unless the right is reserved, I have a right to stop you from building

any structure on it, no matter how much value that might add to the property.

There is one other matter. It is already admitted that [70] what was done here was to take the frame of a structure and enclose it and make it a livable structure, or make the terrain usable, by protecting it against the wind. Now, whether that involved the expenditure of \$100 or \$1,000 is not material. The Government of the United States is the only one who has the right to say what changes should occur in that property from the moment of its taking.

In this particular case the Government was not put in immediate possession. They did not ask for the right of immediate possession. I do not know why they did not do it. Often they do not do it, and when they don't, they get into trouble, because the people assume that they have a right to remain. But when they do that, it is the function of the court to prevent them from changing the property.

Why, just the other day I issued a temporary injunction to prevent the people who are mining a part of Muroc Lake for that rotary mud, without a hearing, to stop them from removing more of the mud, because the removal of it would change the contour of the property which the Government had already acquired. So it is the most common thing for us to be asked to issue injunctive relief where the object is to maintain the property in status quo.

There is also this to consider. It becomes very important in fixing valuations to know that when an appraiser has gone out he sees the property as it

existed, and where there [71] has been a change the problem always arises as to what was there on the property at the time of taking. It is very easy to say, "Oh, well, these buildings here were not in any different form, except that I paved a little here, and I put a roof on it. I just spent a few dollars."

That reminds me of the old story of the man who said that he had a barrel, and he said it was an heirloom, it had been in the family for a hundred years. And a man said to him, "Look, do you mean to say there has never been any repair on this old barrel?" And the man said, "Oh, yes, my grandfather had some staves taken out and replaced, and my father had some new hoops put around it, and my great-grandmother before him did something else." So the fellow decided that the only heirloom that was left was the bung-hole.

That just shows the difficulty in trying to reconstruct a thing to the way it was, the moment you make changes in property as of a particular date.

Now, it is admitted by Mrs. Barnes and Mr. McKendry that they have made these changes, and they have no right to make them, and they intend to make additional changes. They may say they are only going to paint, but we don't know what may be done.

Of course, if the Government were willing to accept her stipulation, that would be up to the Government. I am not [72] concerned with that. But if the Government is not willing to accept a stipulation then an injunction is the only remedy. Furthermore, if, as Mrs. Barnes says, she does not intend

to do anything further, then she is not harmed, because the Government is not going to have her tear down the glass that she has put up now, and the Government is not asking her to demolish the property and to restore it to what it was. The Government merely seeks that there be no further attempts made to change the appearance, the contour of the structure, until the cause is determined.

She says she is very hopeful of winning a decision on the motions. If I had heard the other motion, I probably could express an opinion as to the chances, but as I didn't hear it, and I don't know what is in these affidavits which have not even been opened, I don't know what factual situation she has brought to the attention of the court, that might result in a court taking the radical measure of setting aside a declaration of taking and determining that the taking is not necessary, and restoring the property to the defendant and making her restore the money she has already received.

Frankly, I do not know of any case where it has gone as far as this one has, where any court has ever done that.

Mr. Weymann: I don't know of any either, your Honor.

The Court: I do not know of any, but this may be one of the new things that may be done. But, as I say, I am not [73] prejudging that because it is not before me. I could not handle it if I wanted to, because it has been partly heard by another judge. I acquainted myself with the record in that respect

while I was waiting this morning, because I felt that I ought to know what had gone on.

Now, in addition to the declaration of taking and the order on the declaration of taking there is that distribution, which I ordered under the petition and signature of Mrs. Barnes. It was not an ex parte order. The only so-called ex parte order was the decree on the declaration of taking, and there is no provision for a hearing, under the law, on that, and the court has never held that anybody is entitled to a hearing in those cases. The only cases in which we hold a hearing is on an order for immediate possession, and the only reason we hold a hearing is to avoid any injustice to occupants. I have heard several such cases.

For instance, when the Navy wanted that big piece of land at Pacific Beach in San Diego County, I held an open hearing and heard witnesses, because there were people who had their homes there, which had to be demolished, and this was in wartime. That was in 1943 and 1944, and they might probably have been left to sleep in the streets if their wishes were not consulted. So we held hearings and asked each person, "What do you intend to do, and how much time do you want to move your house, if you are going to move it?" And, "How much [74] time do you think you will need to relocate yourself?"

Then when an order for immediate possession was issued, the time was fixed for the various persons to vacate the property.

Now, if Judge Beaumont should decide that for some reason the entire proceeding is invalid, and set aside the order made by me and order the case dismissed, which, as I say, is a very remote possibility, because I know of no instance where a case strong enough has been made to warrant such a drastic action on the part of any court, but assuming that to be the case, it would merely mean that everybody would be restored to the condition in which he was. Mrs. Barnes would have to return the money that the Government had paid out on her own application, and the Government would have to give back full possession of the property to her.

In any event, maintaining the status quo cannot harm the defendants, and if the injunction is not issued, and they continue to make changes that to them may appear to be immaterial, may create a lot of confusion in the record. It is certainly the right of the Government of the United States to say what improvements shall be placed there, because it is already the owner of the property, and has already paid on account some \$200,000. The condemnation case is merely a forcible sale, and the Government has already made a down payment. I am putting it Mrs. Barnes' way. The Government [75] has made a down payment of \$200,000, and if the deal does not go through, somebody is going to have to return the \$200,000. At any rate, the Government has \$200,000 in the deal, and also the obligation to pay more if it goes on. So, in addition to that, assuming that the case is to go on, many difficulties would arise if the contour of the prop-

erty is changed in any manner from what it was on the day it was taken.

I find, therefore, that according to the admissions of the defendants themselves, they have added other structures there, that the additions are substantial, that they were made without the consent of the Government, that there is a likelihood unless restraint is made, others might be done, and that if this was not enjoined it would result not only in injuring the Government in its right of property, but it might create later difficulties when it came to valuation. So the only way of preventing further injury is to issue this injunction, which, of course, will fall by the wayside if Judge Beaumont shall decide that the action should be dismissed.

I notice also from the record that the motions are still subject to argument. The deposition has not been read yet. Mrs. Barnes was asked by Judge Beaumont if she wanted to submit the matter after the depositions were in, and after briefs, and she said no, she wanted to make a speech. Evidently, [76] she has in mind the speech she wants to make, and Judge Beaumont said it was all right with him, that after the depositions were in a time for argument would be fixed.

I find no entry in the record fixing the time for the argument. Am I correct?

Mr. Weymann: Judge Beaumont has set aside the 23rd and 24th of February for the determination not only of those two motions, but of the five other motions which have been made.

The Court: In this case?

Mr. Weymann: In this case.

The Court: Then it is for that reason that I am coming up at that time. He has asked me to take over his own calendar at that time, so that we will run two courts in that week. I will try two condemnation cases involving other matters while he completes this. I did not know what it was. I knew that it was something which required him to ask for assistance, so I have agreed to come back and try his regular calendar while he disposes of these matters.

At any rate, that will be the order of the court, and you will prepare the order.

Mr. Weymann: I will prepare and submit the order.

The Court: And make the findings, as required by the rule. Under the rule, you will be served with the proposed order, and then you will have five days in which to present [77] in writing any objections which you have, and you will file them with the clerk. The clerk will keep Mr. Weymann's proposed findings and order of injunction for five days, to allow you the time to file them, and they are to be filed up here. Then when they are both received, the clerk will present them to me, either here or in Los Angeles, to determine whether changes should be made.

Mr. Weymann: May we understand that the defendant from here on is restrained from making any further changes?

The Court: Oh, yes. The injunction is issued. The minute order will show the injunction, as

prayed for, is issued upon the basis of the findings which I have announced. What will follow will be merely the formal findings and formal injunction, which is required under the rules.

Mr. Weymann: Very well, your Honor.

Mrs. Barnes: I don't understand it, your Honor. I would like to have you make it very clear to me, because this whole thing has been stirred up over nothing.

The Court: The session is at end. It is not my function to give explanations. What I have said is plain enough to anyone who understands the English language, and for anything further you can get a lawyer to explain it to you. [78]

[Endorsed]: Filed May 19, 1954.

[Endorsed]: No. 14380. United States Court of Appeals for the Ninth Circuit. E. S. McKendry and Pancho Barnes, also known as Florence Lowe Barnes and as Florence Lowe Barnes McKendry, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeals from the United States District Court for the Southern District of California, Northern Division.

Filed: June 4, 1954.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14380

E. S. McKENDRY and PANCHO BARNES,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

STATEMENT OF POINTS

To: The Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

1. The District Court erred in the preliminary statement in the temporary injunction, wherein the District Court stated that William Emmert Barnes was named in the order to show cause.

2. The District Court erred in the preliminary statement in the temporary injunction, wherein the District Court stated defendant William Emmert Barnes failed to appear.

3. The District Court erred in Finding No. I, wherein the District Court found that title to the land and premises became vested in the plaintiff United States of America on February 27, 1953.

4. The District Court erred in Finding No. II, wherein the District Court found that notwithstanding the ownership of said property by the United States of America as aforesaid, the above named defendants continue to occupy said premises to the exclusion of the United States of America.

5. The District Court erred in Finding No. III, wherein the District Court found that without the consent and against the will of the United States of America the said defendants have made changes in the physical characteristics of said property by constructing certain improvements thereon and they will continue with such construction unless enjoined by this court from proceeding with said construction.

6. The District Court erred in Finding No. IV, wherein the District Court found that plaintiff will suffer irreparable injury, loss, and damage by the continuance of the said acts of the defendants as aforesaid, in that plaintiff will be put to additional expense for the removal of said construction upon securing possession of said premises, and that the appraisal of the value of the structures and improvements for which the said defendants may be entitled to compensation in plaintiff's condemnation proceeding will be made more difficult and uncertain.

7. The District Court erred in Finding No. V, wherein the District Court found that by reason of the facts found as aforesaid the court is of the opinion and decides that plaintiff is entitled to a temporary injunction as prayed for.

8. The District Court erred in the final paragraph of the temporary injunction when the District Court issued the Temporary Injunction as follows: Wherefore, It Is Ordered and Adjudged that the defendants, Florence Lowe Barnes, also known as Florence Lowe Barnes McKendry, also known as

Pancho Barnes, E. S. McKendry, and William Emmert Barnes, and their respective attorneys, agents, servants, employees, and all persons acting by, through, or under them, or either of them, or by or through their order, be and they hereby are enjoined until further order of the court from erecting or causing to be erected or continuing to erect any buildings, structure, or improvement of any description upon any portion of the premises described in plaintiff's complaint and its declaration of taking on file herein. Said premises are known and described as all of Section 20, Township 9 North, Range 10 West, San Bernardino Meridian, in the County of Kern, State of California.

9. The District Court erred in accepting Plaintiff's unauthenticated Exhibit No. I into evidence.

10. The District Court erred in not taking cognizance of the discrepancies between the affidavits made by the Plaintiff's witnesses and their testimony in court.

11. The District Court erred in not finding that the issue as to the title of the premises is contested as between plaintiff and defendants and is still undecided by the court.

12. The District Court erred in not making a finding that the title to property was a defeasible title subject to being set aside by court decision.

13. The District Court erred in not finding that the defendants workmen were not about to construct nor were they engaged in construction work which was the only issue before the court at that time.

14. The District Court erred in making this statement in open Court: "I issued an order to show cause returnable this morning to be heard by Judge Beaumont or by me." However the order to show cause stated plainly that it was to be heard before Judge Yankwich.

15. The District Court erred in not taking into consideration that the following statements in the motion for the "temporary restraining order" were fallacious and untrue:

(a) Page 2 line 1 "of which the defendants and each of them had due notice". No notice ever was or has yet been officially given any of the defendants.

(b) Page 2 line 5 "and will, unless restrained by the Court, complete the erection of certain valuable buildings and improvements on said property".

(c) Page 2 line 7 "That the continuation of said acts by the said defendants will cause immediate and irreparable injury, loss, or damage to the United States of America in that it will be put to additional expense for the removal and demolition of said buildings and structures on said land, in order to construct the airplane runway for which said property was acquired; and the erection of additional buildings and structures on said property will subject the United States of America to additional claims for damages for the acquisition and removal of such additional structures and improvements now in the course of erection.

(d) Page 2 line "(a) each day of delay in restraining the continuance of the acts complained of

as hereinabove set forth will increase the cost to the United States of America in removing the obstructions to the construction of its aforesaid airplane runway; and (b) the said defendants have known for more than six months last past that plaintiff required the use of said property for the construction of its said airplane runway, and that such construction would necessitate the demolition and removal of existing structures.”

16. The District Court erred in placing himself on the bench of another District Judge to make a decision on this case that was already in the process of trial and being heard by another Judge. His decisions, comments and findings prove that he was not sufficiently familiar with this case to render a proper and qualified decision.

17. The District Court erred in concluding that the plaintiff United States of America, was entitled to a temporary injunction.

18. The District Court erred in issuing a temporary injunction for the plaintiff United States of America and against the defendants.

Signed and dated this 17th day of June, 1954.

/s/ PANCHO BARNES,

/s/ E. S. McKENDRY,

Appellants in Propria Persona

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 19, 1954. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

COUNTER-DESIGNATION OF RECORD FOR
PRINTING

The United States of America, appellee, designates the following for inclusion in the printed record:

1. Receipt and partial satisfaction executed by E. S. McKendry, as trustee, filed March 13, 1953.
2. Receipt and partial satisfaction executed by the Farmers and Merchants Bank of Long Beach, filed March 21, 1953.
3. Petition for partial distribution of compensation, filed March 31, 1953.
4. Order on petition for partial distribution, filed March 31, 1953.
5. Receipt executed by Bureau of Internal Revenue, filed April 17, 1953.
6. Receipt executed by State of California, filed April 17, 1953.
7. Those portions of the reporter's transcript of the proceedings on February 5, 1954, not designated by appellants.

THE UNITED STATES OF AMERICA,

/s/ By PERRY W. MORTON,

Assistant Attorney General

/s/ ROGER P. MARQUIS,

/s/ JOHN C. HARRINGTON,

Attorneys, Department of Justice,
Washington, D. C.

Certificate of Service attached.

[Endorsed]: Filed June 30, 1954. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

AMENDED DESIGNATION OF RECORD

Appellants, E. S. McKendry and Pancho Barnes, designates the following documents and excerpts from the Reporter's Transcript, to be printed as part of the record:

This Amended Designation of Record supercedes the original Designation of Record.

Eliminate any affidavits of service and insert the words "affidavit of service by mail."

Eliminate title of District Court and cause on each document except on Complaint and Temporary Injunction.

1. Complaint in Condemnation. Pages 2, 3, 4, 5.
2. Declaration of Taking.
3. Judgment on Declaration of Taking.
4. Petition for Partial Distribution.
5. Order on Petition for Partial Distribution.
6. Motion for Order of Immediate Possession.
7. Notice of Motion to Set Aside Declaration of Taking and to Vacate and Set Aside Ex Parte Judgment.

8. Motion for Temporary Restraining Order.
9. Order to Show Cause why Temporary Restraining Order Should not Issue.
10. Notice of Motion to Dismiss.
11. Order Denying Temporary Injunction.
12. Affidavit of Mailing.
13. Temporary Injunction.

Opinion.

14. Supplemental Amendment to Motion to Set Aside Declaration and to Vacate and Set Aside Ex Parte Judgment.

15. Supplemental Amendment to Motion to Dismiss.

16. Notice of Appeal.

17. Undertaking for Costs on Appeal.

17. Designation of Record.

19. Motion for extension of time to file record and docket appeal.

20. The following portions of the Reporter's Transcript of Proceedings in the District Court, February 5, 1954:

* * * * *

21. Statement of Points.

22. Amended Designation of Record.

Dated this 18th day of July, 1954.

/s/ PANCHO BARNES,

/s/ E. S. McKENDRY,

Appellants in Propria Persona

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 20, 1954. Paul P. O'Brien,
Clerk.

